

1 The Honorable Robert S. Lasnik
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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

12 BRUCE CORKER d/b/a RANCHO ALOHA;
13 COLEHOUR BONDERA and MELANIE
14 BONDERA, husband and wife d/b/a KANALANI
15 OHANA FARM; and ROBERT SMITH and
16 CECELIA SMITH, husband and wife d/b/a
17 SMITHFARMS, on behalf of themselves and
18 others similarly situated,

19 Plaintiffs,

20 v.

21 COSTCO WHOLESALE CORPORATION, a
22 Washington corporation; AMAZON.COM, INC., a
23 Delaware corporation; HAWAIIAN ISLES KONA
24 COFFEE, LTD., LLC, a Hawaiian limited liability
25 company; COST PLUS/WORLD MARKET, a
26 subsidiary of BED BATH & BEYOND, a New
27 York corporation; BCC ASSETS, LLC d/b/a
BOYER'S COFFEE COMPANY, INC., a
Colorado corporation; L&K COFFEE CO. LLC, a
Michigan limited liability company; KEVIN
KIHNKE, an individual; MULVADI
CORPORATION, a Hawaii corporation; COPPER
MOON COFFEE, LLC, an Indiana limited liability
company; GOLD COFFEE ROASTERS, INC., a
Delaware corporation; DEFENDANT COFFEE
AND DISTRIBUTION COMPANY, a Minnesota
corporation; PACIFIC COFFEE, INC., a Hawaii
corporation; THE KROGER CO., an Ohio
corporation; WALMART INC., a Delaware
corporation; BED BATH & BEYOND INC., a
New York corporation; ALBERTSONS
COMPANIES INC., a Delaware corporation;
SAFEWAY INC., a Delaware corporation; MNS
LTD., a Hawaii corporation; THE TJX
COMPANIES d/b/a T.J. MAXX, a Delaware
corporation; MARSHALLS OF MA, INC. d/b/a
MARSHALLS, a Massachusetts corporation;
SPROUTS FARMERS MARKET, INC. a
Delaware corporation,

Defendants.

No. 2:19-cv-00290-RSL

**KEVIN KIHNE'S ANSWER TO
PLAINTIFFS' THIRD AMENDED
COMPLAINT – CLASS ACTION**

JURY TRIAL DEMANDED

Defendant Kevin Kihnke (“KIHNKE”) files this Answer to Plaintiffs’ Third Amended Complaint (“Complaint”). To the extent that any allegation in the Complaint is not specifically admitted, the allegation is denied. In addition, KIHNKE is still investigating the claims brought by Plaintiffs and reserves the right to supplement this Answer. KIHNKE answers the corresponding numbered paragraphs of the Complaint as follows:

I. INTRODUCTION

1. This class action is filed on behalf of the Kona coffee farmers who grow the entire worldwide supply of authentic Kona coffee. Kona coffee, renowned for its distinctive flavor and aroma, is one of the most famous and revered specialty coffees in the world. But only coffee grown on farms located within the Kona District of the Big Island of Hawaii (“Kona District” defined in paragraph 38 below) can be truthfully marketed, labeled, and sold as Kona coffee. The volcanic soil, the elevation, and the humidity of this region combine to give Kona coffee its distinctive characteristics. The term “Kona” tells consumers their coffee comes from this distinctive geographic region.

ANSWER: KIHNEK admits that Plaintiffs have brought this putative class action against Defendants. KIHNEK denies that the action is filed on behalf of the Kona coffee farmers because Defendant is aware of Kona coffee farmers who do not support this lawsuit and who believe that the economic theories upon which it is based are incorrect, and that, if successful, this lawsuit will drive down the price paid Kona farmers for their products. KIHNEK denies that only coffee grown on farms located within the Kona district can be truthfully marketed, labeled, and sold as Kona coffee. KIHNEK also denies that the term “Kona” tells consumers their coffee comes from any distinctive region. L&K Coffee Co. does not sell any of the products described in this complaint and has not sold any since 2019. KIHNEK lacks sufficient information to admit or deny the remaining allegations in Paragraph 1, and therefore denies the same.

2. Plaintiffs bring this action against coffee distributors, wholesalers, and retailers who for years have wrongfully profited from the goodwill and reputation associated with the

1 geographic region of Kona by passing off ordinary commodity coffee as “Kona” coffee.
 2 Defendants’ deceptive practices have flooded the market with counterfeit “Kona” coffee products,
 3 injuring honest Kona farmers in two distinct ways. First, the marketplace is overwhelmed with
 4 counterfeit “Kona” products, and that excessive supply drives the price down sharply. Second,
 5 because the counterfeit products are basically comprised of generic commodity coffee, consumers
 6 are misled into concluding that Kona coffee is nothing special. These deceived consumers become
 7 less likely to pay a premium for authentic Kona coffee in the future.

8 **ANSWER:** KIHNEKE admits that Plaintiffs have brought this action against the
 9 Defendants. KIHNEKE denies the remaining allegations in Paragraph 2. KIHNEKE also specifically
 10 denies that there is any type of “ordinary commodity coffee,” or that Defendants’ coffee is
 11 “ordinary.” By classifying coffee as an “ordinary commodity type” versus an “authentic Kona,”
 12 Plaintiffs wrongfully assume that the majority of coffee consumers paying \$5-10 per pound for
 13 coffee: (1) Distinguishes one coffee from another based on its geographic origin; (2) is even aware
 14 of an “authentic Kona” product, and (3) Might ever have even the slightest interest in paying \$35
 15 to \$50 per pound for “authentic Kona” if the “ordinary commodity” coffee with the word “Kona”
 16 on the label did not exist. KIHNEKE also denies this allegation because it relies on the term
 17 “authentic Kona coffee,” which remains undefined by Plaintiffs. KIHNEKE is left without
 18 knowledge as to what constitutes “authentic Kona.” KIHNEKE will not repeat this issue with the
 19 term “authentic Kona” but denies each and every allegation herein that incorporates that term.
 20 L&K Coffee Co. does not sell any of the products described in this complaint and has not sold any
 21 since 2019. KIHNEKE lacks sufficient information to admit or deny the remaining allegations in
 22 Paragraph 2, and therefore denies the same.

23
 24 3. By their actions, Defendants have artificially depressed the market price of
 25 authentic Kona coffee, harmed the reputation of authentic Kona coffee as a premium product, and
 26 caused consumer confusion as to the legitimate sources of Kona coffee. As a direct result, Plaintiffs
 27

1 have lost considerable profits, and Defendants have made considerable unjust profits, all in
 2 violation of the Lanham Act, 15 U.S.C. § 1125.

3 **ANSWER:** KIHNEKE denies the allegations in Paragraph 3. L&K Coffee Co. does not sell any
 4 of the products described in this complaint and has not sold any since 2019. L&K Coffee Co.'s
 5 withdrawal of its Kona products from the market has had no measurable impact on the price of
 6 Kona coffee, thereby disproving the allegation that L&K Coffee Co.'s sale of its Kona coffee
 7 "artificially depressed" the price of Kona coffee. Even if the allegations in this paragraph were
 8 true, KIHNEKE would not be responsible factually or legally for the effect, if any, that any seller of
 9 Kona products has had on the price of Kona coffee. Not only is there no joint liability among
 10 defendants in this case, there is also an unlawful misjoinder of the parties.

11

12 4. Plaintiffs bring this action to obtain redress for all Kona coffee growers who have
 13 been similarly injured by the conduct of the Defendants. Plaintiffs seek to recover for the members
 14 of the Class all damages available under the Lanham Act, including compensation for lost profits,
 15 disgorgement of profits of the Defendants, corrective advertising damages, and statutory attorneys'
 16 fees and costs. Plaintiffs also seek equitable relief in the form of an injunction permanently
 17 prohibiting the Defendants responsible for producing the accused coffee products from marketing,
 18 selling, or distributing any coffee products labeled Kona. Plaintiffs further seek an injunction
 19 prohibiting the retail Defendants from selling any coffee products that falsely designate Kona as
 20 the source of origin of the coffee.

21 **ANSWER:** KIHNEKE admits that Plaintiffs claim that they seek to recover all alleged
 22 damages available under the Lanham Act for the purported members of the Class. L&K Coffee
 23 Co. does not sell any of the products described in this complaint and has not sold any since 2019.
 24 KIHNEKE denies that the Plaintiffs are entitled to the relief they seek, and denies the remaining
 25 allegations in Paragraph 4.

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II. PARTIES

5. Plaintiff Bruce Corker is an individual who throughout the class period described in this Complaint has done business under the name of “Rancho Aloha,” growing, harvesting, and roasting Kona coffee within the Kona District. Mr. Corker sells his Kona coffee under the “Rancho Aloha” label to consumers around the world through his website, www.ranchoaloha.com.

ANSWER: KIHNE lacks sufficient information to admit or deny the allegations in Paragraph 5, and therefore denies the same.

6. Plaintiffs Colehour and Melanie Bondera are a married couple who throughout the class period described in this Complaint have done business under the name of “Kanalani Ohana Farm,” growing, harvesting, and roasting Kona coffee within the Kona District. The Bonderas sell their Kona coffee under the “Kanalani Ohana Farm” label to consumers around the world through their website, www.kanalaniohana.farm.

ANSWER: KIHNE lacks sufficient information to admit or deny the allegations in Paragraph 6, and therefore denies the same.

7. Plaintiffs Robert and Cecelia Smith are a married couple who conducted business under the name of “Smithfarms,” growing, harvesting, and roasting Kona coffee for decades within the Kona District until approximately June 17, 2015 when they formed Smithfarms, LLC. Plaintiff Smithfarms, LLC (“Smithfarms”) is a Hawaii limited liability company registered on or about June 17, 2015 with its principal place of business in Honaunau, Hawaii. Since registration, Smithfarms has grown, harvested, and roasted Kona coffee within the Kona District. Smithfarms’ sole member is “The Robert H. Smith Revocable Trust” for which Plaintiff Robert Smith is the grantor and sole trustee. Smithfarms is governed by its two managers, Robert and Cecelia Smith (the “Smiths”), a married couple. Smithfarms and the Smiths sell or sold their Kona coffee under the “Smithfarms” label to consumers around the world through the website, www.smithfarms.com, throughout the class period described in the Complaint.

1 **ANSWER:** KIHNE lacks sufficient information to admit or deny the allegations in
 2 Paragraph 7, and therefore denies the same.

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4 8. On information and belief, defendant HAWAIIAN ISLES KONA COFFEE LTD.,
 5 LLC (“Hawaiian Isles”), is a Hawaii limited liability company with its principal place of business
 6 in Honolulu, Hawaii. Hawaiian Isles sells a variety of coffee products throughout the United
 7 States, including this Judicial District, through various retail outlets, including but not limited to
 8 Cost Plus World Market, Kroger, Safeway, Albertsons, ABC Stores, Amazon, and Walmart.
 9 Hawaiian Isles falsely designates the geographic origin of its “Kona” coffee products with the
 10 prominent placement of KONA on the front of the packaging. Hawaiian Isles advertises its coffee
 11 products nationally on the Internet and with digital marketing campaigns through social media
 12 sites such as Facebook.

13 **ANSWER:** KIHNE lacks sufficient information to admit or deny the allegations in
 14 Paragraph 8, and therefore denies the same.

15

16 9. On information and belief, defendant COST PLUS/WORLD MARKET (“World
 17 Market”) is a retail chain with 276 stores across the United States including 11 stores located in
 18 this Judicial District. World Market, with its headquarters in Alameda, California, is a wholly
 19 owned subsidiary of BED, BATH & BEYOND INC., a New York corporation. Through its retail
 20 locations and its own online store, www.worldmarket.com, World Market sells in this Judicial
 21 District and throughout the United States both its own private-label Kona coffee products as well
 22 as Kona coffee products offered by third parties. World Market falsely designates the geographic
 23 origin of its “Kona” coffee products with the prominent placement of KONA on the front of the
 24 packaging. Certain third-party coffee products that World Market sells, such as those from
 25 Hawaiian Isles, similarly feature on the label the false designation of KONA as the geographic
 26 origin of the coffee.

1 **ANSWER:** KIHNE lacks sufficient information to admit or deny the allegations in
 2 Paragraph 9, and therefore denies the same.

3

4 10. On information and belief, BCC ASSETS, LLC d/b/a BOYER'S COFFEE
 5 COMPANY, INC. ("Boyer's") is a Colorado corporation with its principal place of business in
 6 Denver, Colorado. Boyer's is a wholly owned subsidiary of Luna Gourmet Coffee and Tea
 7 Company, LLC, which is a Colorado limited liability company also based in Denver, Colorado.
 8 Boyer's sells its coffee products in this Judicial District and throughout the United States through
 9 its online store at www.boyerscoffee.com as well as through national retailers including but not
 10 limited to Amazon, Walmart, and Safeway. Boyer's falsely designates the geographic origin of its
 11 "Kona" coffee products with the prominent placement of KONA on the packaging.

12 **ANSWER:** KIHNE lacks sufficient information to admit or deny the allegations in
 13 Paragraph 10, and therefore denies the same.

14

15 11. On information and belief, defendant L&K COFFEE CO. LLC ("L&K") is a
 16 Michigan limited liability company with its principal place of business at Nunica, Michigan. L&K
 17 primarily does business under the name Magnum Coffee Roastery, under which it sells a variety
 18 of coffee products under its Magnum Exotics label. L&K sells its coffee products throughout the
 19 United States, including this Judicial District, through both its own online store,
 20 www.javaboulevard.com, and various retail outlets, including but not limited to Costco, Amazon,
 21 Walmart, T.J. Maxx and Marshalls. L&K falsely designates the geographic origin of its "Kona"
 22 coffee products with the prominent placement of KONA on the front of the packaging.

23 **ANSWER:** KIHNE admits that L&K is a Michigan limited liability company with its
 24 principal place of business in Nunica, admits that L&K primarily does business under the name
 25 Magnum Coffee Roastery, and that it sells a variety of coffee products under a Magnum Exotics
 26 label. Defendant admits that L&K sells and/or has sold coffee products throughout the United
 27 States, including very limited amounts in this Judicial District, through both its own online store,

1 www.javaboulevard.com, and various retail outlets. L&K does not sell any of the products
 2 described in this complaint and has not sold any since 2019. L&K has never sold Kona coffee
 3 products in the state of Hawaii. KIHNEK denies the remaining allegations.

4

5 12. On information and belief, KEVIN KIHNEK (“Kihne”) is an individual that
 6 resides in Grand Rapids, Michigan. Kihne is owner and president of L&K and is the primary
 7 decision-maker for the package design of L&K’s coffee products, including coffee products that
 8 have been falsely designated as originating from “Kona.” Kihne is also solely responsible for
 9 determining the percentage of Kona coffee included in L&K’s “Kona” coffee products.

10 **ANSWER:** Kihne admits he is L&K’s president and owner. Defendant denies the
 11 remaining allegations of Paragraph 12. Kihne denies that he is liable in any manner in this
 12 lawsuit. Kihne denies that he is an appropriate defendant herein. L&K does not sell any of the
 13 products described in this complaint and has not sold any since 2019.

14

15 13. On information and belief, defendant MULVADI CORPORATION is a Hawaii
 16 corporation with its principal place of business in Honolulu, Hawaii. Mulvadi sells a variety of
 17 coffee products throughout the United States, including this Judicial District, through various retail
 18 outlets, including but not limited to ABC Stores, Amazon, and Walmart. Mulvadi falsely
 19 designates the geographic origin of its “Kona” coffee products with the prominent placement of
 20 KONA on the front of the packaging.

21 **ANSWER:** KIHNEK lacks sufficient information to admit or deny the allegations in
 22 Paragraph 13, and therefore denies the same.

23

24 14. On information and belief, defendant COPPER MOON COFFEE, LLC (“Copper
 25 Moon”) is an Indiana limited liability company with its principal place of business in East
 26 Lafayette, Indiana. Copper Moon sells a variety of coffee products in this Judicial District and
 27 throughout the United States, including this Judicial District, both through its webpage,

1 www.coppermooncoffee.com, and through various retail outlets, including but not limited to
 2 Copper Moon Coffee Cafes, Amazon, Walmart, Sam's Club, Bed Bath & Beyond (the parent
 3 company of World Market), Office Depot, and Staples. Copper Moon falsely designates the
 4 geographic origin of its "Kona" coffee products with the prominent placement of KONA on the
 5 front of the packaging.

6 **ANSWER:** KIHNE lacks sufficient information to admit or deny the allegations in
 7 Paragraph 14, and therefore denies the same.

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 9 15. On information and belief, defendant GOLD COFFEE ROASTERS, INC., dba
 10 Hawaiian Gold and also Parry Estates ("Hawaiian Gold"), is a Delaware corporation with its
 11 principal place of business in Jupiter, Florida. Hawaiian Gold sells a variety of coffee products
 12 throughout the United States, including this Judicial District, through its own website and various
 13 retail outlets, including but not limited to Kroger, Amazon, Walmart, T.J. Maxx and Marshalls.
 14 Hawaiian Gold falsely designates the geographic origin of its "Kona" coffee products with the
 15 prominent placement of KONA on the front of the packaging.

16 **ANSWER:** KIHNE lacks sufficient information to admit or deny the allegations in
 17 Paragraph 15, and therefore denies the same.

18
 19 16. On information and belief, CAMERON'S COFFEE AND DISTRIBUTION
 20 COMPANY ("DEFENDANT") is a Minnesota corporation with its principal place of business in
 21 Shakopee, Minnesota throughout the United States through its online store at
 22 www.cameronscoffee.com as well as through national retailers including but not limited to
 23 Amazon, Walmart, Target, Sprouts, and Safeway. DEFENDANT falsely designates the
 24 geographic origin of its "Kona" coffee products with the prominent placement of KONA on the
 25 packaging.

26 **ANSWER:** KIHNE lacks sufficient information to admit or deny the allegations in
 27 Paragraph 16, and therefore denies the same.

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2 17. On information and belief, defendant PACIFIC COFFEE, INC., which does
3 business as Maui Coffee Company (“MCC”), is a Hawaii corporation with its principal place of
4 business in Lahaina, Hawaii. MCC sells a variety of coffee products throughout the United States,
5 including this Judicial District, both through its webpage, www.mauicoffeeeco.com, and through
6 various retail outlets, including but not limited to ABC Stores, Amazon, Walmart, and Target.
7 MCC falsely designates the geographic origin of its “Kona” coffee products with the prominent
8 placement of 100% KONA on the front of the packaging.

9 **ANSWER:** KIHNE lacks sufficient information to admit or deny the allegations in
10 Paragraph 17, and therefore denies the same.

11
12 18. On information and belief, defendant THE KROGER CO. (“Kroger”) is an Ohio
13 Corporation, with its principal place of business in Cincinnati, Ohio. Kroger is a retail chain with
14 over 2,700 stores across the United States, including approximately 119 stores located in this
15 Judicial District. Kroger also does business as Fred Meyer and QFC. With its private label “Kivu,”
16 Kroger falsely designates the geographic origin of its “Kona” coffee products with the prominent
17 placement of KONA on the label of both its pre-packaged products and its self-serve coffee
18 dispensers. In addition, Kroger sells coffee products from Hawaiian Gold, and others, which also
19 falsely designates Kona as the geographic origin of its coffee.

20 **ANSWER:** KIHNE lacks sufficient information to admit or deny the allegations in
21 Paragraph 18, and therefore denies the same. L&K has never sold Kroger any of the products
22 described in this complaint.

23
24 19. On information and belief, defendant AMAZON.COM, INC. (“Amazon”) is a
25 Delaware corporation with its principal place of business in Seattle, Washington. Amazon is the
26 largest online retailer in the world. Through its online store at www.amazon.com, Amazon sells in
27 this Judicial District and throughout the United States a variety of deceptive coffee products,

1 including, but not limited to, the following: Hawaiian Isles, Hawaii Gold, Mulvadi, Cameron's
 2 Copper Moon, Boyer's, Hazz and Magnum Exotics. Each of these brands sells products that falsely
 3 designate KONA as the origin of the coffee beans.

4 **ANSWER:** KIHNEK admits that Amazon has sold certain of L&K's products through its
 5 online store. KIHNEK denies that the L&K coffee products sold by Amazon are deceptive, and
 6 further denies that such products falsely designate KONA as the origin of the coffee beans. L&K
 7 does not sell any of the products described in this complaint and has not sold any since 2019.
 8 KIHNEK lacks sufficient information to admit or deny the remaining allegations in Paragraph 19,
 9 and therefore denies the same.

10

11 20. On information and belief, defendant WALMART INC. ("Walmart") is a
 12 corporation organized and existing under the laws of the State of Delaware with its principal place
 13 of business in Bentonville, Arkansas. Walmart has a total of 5,358 stores nationwide, and
 14 approximately 67 stores in Washington. Walmart sells in this Judicial District and throughout the
 15 United States a variety of deceptive coffee products, including but not limited to the following:
 16 MCC, Mulvadi, Copper Moon, Cameron's, Hawaiian Gold, Boyer's, and Hawaiian Isles. Each of
 17 these brands sells products that falsely designate KONA as the origin of the coffee beans.

18 **ANSWER:** KIHNEK lacks sufficient information to admit or deny the remaining
 19 allegations in Paragraph 20, and therefore denies the same.

20

21 21. On information and belief, defendant COSTCO WHOLESALE CORPORATION
 22 ("Costco") is a corporation organized and existing under the laws of the State of Washington with
 23 its principal place of business in Issaquah, Washington. Costco is the second largest retailer in the
 24 world, and it owns and operates numerous retail locations within this Judicial District. Through its
 25 retail and online stores, Costco sells in this Judicial District and throughout the United States
 26 deceptive coffee products such as Magnum Exotics, which falsely designates KONA as the origin
 27 of the coffee beans.

1 **ANSWER:** KIHNEK admits that Costco sold certain of L&K's coffee products. KIHNEK
 2 denies that the L&K coffee products sold by Costco are deceptive, and further denies that such
 3 products falsely designate KONA as the origin of the coffee beans. L&K does not sell any of the
 4 products described in this complaint and has not sold any since 2019. KIHNEK lacks sufficient
 5 information to admit or deny the remaining allegations in Paragraph 21, and therefore denies the
 6 same.

7

8 22. On information and belief, defendant BED BATH & BEYOND INC. ("Bed Bath"),
 9 is a New York corporation with its headquarters in Union, NJ. Bed Bath operates over 1000 retail
 10 locations across the country, including numerous retail locations within this Judicial District. Bed
 11 Bath is the parent company of defendant World Market. Through its retail locations and its own
 12 online store, Bed Bath sells in this Judicial District and throughout the United States various coffee
 13 products labeled "Kona" from brands including, but not limited to, Copper Moon. The Copper
 14 Moon coffee products sold by Bed Bath feature on the label the false designation of KONA as the
 15 geographic origin of the coffee.

16 **ANSWER:** KIHNEK lacks sufficient information to admit or deny the allegations in
 17 Paragraph 22, and therefore denies the same.

18

19 23. On information and belief, defendant ALBERTSONS COMPANIES INC.
 20 ("Albertsons") is a Delaware corporation with its principal place of business in Boise, Idaho.
 21 Albertsons is a national grocery store chain with over 2,300 locations across the United States,
 22 including approximately 20 stores in this Judicial District. Albertsons is the parent company of
 23 Safeway, Inc. Through its grocery stores in this Judicial District and throughout the United States,
 24 Albertsons sells a variety of deceptive coffee products, including but not limited to Hawaiian Isles,
 25 which falsely designates KONA as the origin of the coffee beans.

26 **ANSWER:** KIHNEK lacks sufficient information to admit or deny the allegations in
 27 Paragraph 23, and therefore denies the same.

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2 24. On information and belief, defendant SAFEWAY INC. (“Safeway”) is a Delaware
3 corporation with its principal place of business in Pleasanton, CA. Safeway is a national grocery
4 store chain with over 900 locations across the United States, including dozens of stores in this
5 Judicial District. Safeway is a subsidiary of Albertsons. Through its grocery stores in this Judicial
6 District and throughout the United States, Safeway sells a variety of deceptive coffee products,
7 including but not limited to Hawaiian Isles, which falsely designates KONA as the origin of the
8 coffee beans.

9 **ANSWER:** KIHNE lacks sufficient information to admit or deny the allegations in
10 Paragraph 24, and therefore denies the same.

11
12 25. On information and belief, defendant MNS LTD. is a Hawaii corporation with its
13 principal place of business located at Honolulu, Hawaii. Under the tradename ABC Stores, MNS
14 Ltd. (hereinafter “ABC”) owns and operates a chain of retail stores through which it sells a variety
15 of coffee products labeled as “Kona.” ABC also sells in this Judicial District and throughout the
16 United States coffee products labeled as “Kona” through its online store at www.abcstores.com.
17 Some of the coffee products sold by ABC falsely designate KONA as the origin of the coffee
18 beans. Those offending brands include but are not limited to Mulvadi, MCC, and Hawaiian Isles.

19 **ANSWER:** KIHNE lacks sufficient information to admit or deny the allegations in
20 Paragraph 25, and therefore denies the same.

21
22 26. On information and belief, defendant THE TJX COMPANIES (“TJX”) is a
23 Delaware corporation with its principal place of business in Framingham, Massachusetts. TJX
24 Companies, Inc. does business in Washington and elsewhere as T.J. Maxx. TJX operates a chain
25 of T.J. Maxx retail stores in the United States, with numerous locations in this Judicial District,
26 through which it sells a variety of coffee products labeled as “Kona.” TJX touts itself as one of the
27 largest off-price retailers in the country. Some of the coffee products sold by TJX falsely designate

1 KONA as the origin of the coffee beans. Those offending brands include, but are not limited to,
 2 Hawaiian Gold, Magnum Exotics, and Kona Roasting Co.

3 **ANSWER:** KIHNEK admits that TJX has sold certain of L&K's coffee products.
 4 KIHNEK denies that the L&K coffee products sold by TJX are deceptive, and further denies that
 5 such products falsely designate KONA as the origin of the coffee beans. L&K does not sell any
 6 of the products described in this complaint and has not sold any since 2019. KIHNEK lacks
 7 sufficient information to admit or deny the remaining allegations in Paragraph 26, and therefore
 8 denies the same.

9

10 27. On information and belief, defendant MARSHALLS OF MA, INC. ("Marshalls of
 11 MA") is a Massachusetts corporation with its principal place of business in Framingham,
 12 Massachusetts. Marshalls of MA does business in Washington and elsewhere as Marshalls.
 13 Marshalls of MA operates a chain of Marshalls retail stores in the United States, with numerous
 14 locations in this Judicial District, through which it sells a variety of coffee products labeled as
 15 "Kona." Marshalls of MA touts itself as one of the largest off-price retailers in the country. Some
 16 of the coffee products sold by Marshalls falsely designate KONA as the origin of the coffee beans.
 17 Those offending brands include, but are not limited to, Hawaiian Gold, Magnum Exotics, and
 18 Kona Roasting Co.

19 **ANSWER:** KIHNEK admits that Marshalls of MA has sold certain of L&K's coffee
 20 products. KIHNEK denies that the L&K coffee products sold by Marshalls of MA are deceptive,
 21 and further denies that such products falsely designate KONA as the origin of the coffee beans.
 22 KIHNEK lacks sufficient information to admit or deny the remaining allegations in Paragraph 27,
 23 and therefore denies the same.

24

25 28. On information and belief, defendant SPROUTS FARMERS MARKET, INC.
 26 ("Sprouts") is a Delaware corporation with its principal place of business in Phoenix, Arizona.
 27 Sprouts operates over 200 grocery stores across the United States, including multiple locations

1 within this Judicial District. Some of the coffee products sold by Sprouts falsely designate KONA
 2 as the origin of the coffee beans. Those offending brands include, but are not limited to, Cameron's.

3 **ANSWER:** KIHNE lacks sufficient information to admit or deny the allegations in
 4 Paragraph 28, and therefore denies the same.

5

6 **III. JURISDICTION AND VENUE**

7 29. This action arises under 15 U.S.C. §1125(a). This Court has original subject matter
 8 jurisdiction over Plaintiffs' claims for Lanham Act violations under 15 U.S.C. §1121(a) and
 9 federal question jurisdiction under 28 U.S.C. §§1331.

10 **ANSWER:** KIHNE admits that Federal Courts have original subject matter jurisdiction
 11 over alleged Lanham Act violations under 15 U.S.C. §1121(a) and that they exert federal question
 12 jurisdiction under 28 U.S.C. §§1331. KIHNE denies that this specific Court properly has
 13 jurisdiction over all of the claims this lawsuit and therefore denies the remaining allegations in
 14 Paragraph 29.

15

16 30. The Defendants conduct business in this Judicial District, have sold products in this
 17 Judicial District falsely designating "Kona" as the origin of the coffee, and have injured the
 18 reputation of Kona and the farmers of authentic Kona coffee in this Judicial District. Defendant
 19 Amazon, which sells many of the other defendants' deceptive "Kona" products, has its principal
 20 place of business in this Judicial District. Defendant Costco also has its principal place of business,
 21 and numerous retail locations, in this Judicial District. Amazon and Costco are two of the highest-
 22 volume retailers in the world. All of the defendants who produce the deceptive "Kona" products
 23 identified in this complaint sell such products in this Judicial District, either through numerous
 24 physical retail locations (including but not limited to retailers who are also defendants in this
 25 litigation) or through online stores (again including but not limited to retailers who are also
 26 defendants in this litigation). Many of the defendants who manufacture the deceptive "Kona"
 27 products named in this complaint also sell, through their own online stores, such product directly

1 to consumers in this Judicial District. All of the retail defendants who sell the deceptive “Kona”
 2 products identified in this complaint either operate multiple retail locations in this Judicial District,
 3 or they sell the accused products through an online store and then ship the accused products to
 4 consumers in this Judicial District. The prevalence of the sale and distribution of the deceptive
 5 “Kona” products in this Judicial District has harmed the reputation and goodwill associated with
 6 the Kona origin for coffee and has impaired the Plaintiffs’ ability to obtain a fair price for their
 7 authentic Kona coffee, or otherwise compete, in this Judicial District. Each of the defendants has
 8 committed acts of unfair competition and false advertising in this Judicial District in violation of
 9 the Lanham Act.

10 **ANSWER:** KIHNEK admits that L&K conducts very limited business in this district; that
 11 unsubstantial amounts of L&K Kona coffee products were sold in this district; and admits that
 12 L&K sells some very limited L&K coffee products, which are available to consumers in this
 13 Judicial District. KIHNEK denies that this specific Court properly has jurisdiction over this
 14 lawsuit. KIHNEK denies that L&K’s products falsely designate “Kona” as the origin of its coffee;
 15 denies that L&K has injured the reputation of Kona and the farmers of “authentic” Kona coffee as
 16 Plaintiffs have used that term; denies that L&K manufactures deceptive ‘Kona’ products; denies
 17 that the sale and distribution of the allegedly deceptive “Kona” products in this Judicial District
 18 has harmed the reputation and goodwill associated with the Kona origin for coffee and has
 19 impaired the Plaintiffs’ ability to obtain a fair price for their allegedly authentic Kona coffee, or
 20 otherwise compete, in this Judicial District; and denies that L&K has committed acts of unfair
 21 competition and false advertising in this Judicial District in violation of the Lanham Act. L&K
 22 does not sell any of the products described in this complaint and has not sold any since 2019.
 23 KIHNEK lacks sufficient information to admit or deny the remaining allegations in Paragraph 30,
 24 and therefore denies the same. L&K is a Michigan company that does very limited business in this
 25 district and plaintiffs are coffee farmers who reside and do most if not all of their business within
 26 the State of Hawaii. KIHNEK resides in Florida and has no contacts with this forum.

31. Venue is proper in this Court pursuant to 28 U.S.C. §1391 because a substantial part of the events or omissions giving rise to the claims occurred in this Judicial District.

ANSWER: KIHNEK admits that L&K conducts limited, inconsequential business in this district; that L&K's coffee products are sold in this district; and admits that L&K sells some limited L&K coffee products, which are available to consumers in this Judicial District. KIHNEK denies that L&K's products falsely designate "Kona" as the origin of its coffee; denies that L&K has injured the reputation of Kona and the farmers of "authentic" Kona coffee as Plaintiffs have used that term; denies that L&K manufactures deceptive 'Kona' products; denies that the sale and distribution of the allegedly deceptive "Kona" products in this Judicial District has harmed the reputation and goodwill associated with the Kona origin for coffee and has impaired the Plaintiffs' ability to obtain a fair price for their allegedly authentic Kona coffee, or otherwise compete, in this Judicial District; and denies that L&K has committed acts of unfair competition and false advertising in this Judicial District in violation of the Lanham Act. L&K does not sell any of the products described in this complaint and has not sold any since 2019. KIHNEK lacks sufficient information to admit or deny the remaining allegations in Paragraph 30, and therefore denies the same. KIHNEK denies that venue is proper in this Court as L&K is a Michigan company that does limited business in this district and plaintiffs are coffee farmers who reside and do most if not all of their business within the State of Hawaii. KIHNEK resides in Florida and has no contacts with this forum. KIHNEK therefore denied that this Court is the proper venue as to claims against KIHNEK herein.

IV. CLASS ACTION ALLEGATIONS

32. Plaintiffs bring this action on behalf of themselves and all other persons similarly situated under Federal Rule of Civil Procedure 23. In particular, they seek to represent a Class of:

All persons and entities who commercially farmed Kona coffee in the Kona District and then sold their Kona coffee, provided that they farmed and sold their Kona coffee during the time that any Defendant sold coffee product with the false designation of Kona as the origin of the coffee product.

1 Plaintiffs also seek to represent 19 Defendant-Specific Subclasses:

2 All persons and entities who commercially farmed Kona coffee in the
 3 Kona District and then sold their Kona coffee, provided that they
 4 farmed and sold their Kona coffee during the time [Defendant] sold
 5 coffee product with the false designation of Kona as the origin of the
 6 coffee product.

7 Excluded from both the Class and the Subclasses are any entities named as Defendants in this
 8 action.

9 **ANSWER:** KIHNEK admits that Plaintiffs purport to bring a class action, but denies that
 10 the Court should certify the proposed class and denies the remaining allegations of Paragraph 32.
 11 KIHNEK specifically denies that class certification is appropriate or warranted here.

12 33. Plaintiffs meet the prerequisites of Rule 23(a):

13 a. **Numerosity.** On information and belief, between 600 and 1,000 sole
 14 entities grow Kona coffee. The members of the Class and each Subclass are thus so numerous that
 15 joinder of all Class members in this action is not practical.

16 b. **Commonality.** The answers to questions common to the Class and
 17 Subclasses will drive the resolution of this litigation. The common questions of law and fact
 18 include:

19 i. whether Defendants manufactured or sold coffee labeled as
 20 “Kona” that was not grown in the Kona District of Hawaii;

21 ii. whether Defendants’ distribution and sale of products falsely
 22 labeled as “Kona” has created or is likely to create confusion among consumers;

23 iii. whether labeling coffee not grown in the Kona District of Hawaii
 24 as “Kona” constitutes a violation of the Lanham Act;

25 iv. whether the Defendants’ Lanham Act violations have negatively
 26 affected the market price of authentic Kona coffee;

27 v. whether the Defendants’ Lanham Act violations have injured the
 28 goodwill and reputation of the Kona name;

- vi. the extent of damages to authentic Kona growers;
- vii. the extent of Defendants' profits earned as a result of falsely or misleadingly designating "Kona" as the origin of their coffee products;
- viii. viii. the corrective advertising required to remedy the damage Defendants have caused to the goodwill and reputation of the Kona name; and
- ix. the form of injunction necessary to prevent Defendants from causing further harm in violation of the Lanham Act.

c. **Typicality.** Plaintiffs have the same interests as all members of the Class and Subclasses they seek to represent, and Plaintiffs' claims arise out of the same set of facts and conduct as all other members of the Class and Subclasses. Plaintiffs and all proposed Class members grew and sold authentic Kona coffee and competed against the growers and sellers of coffee falsely labeled as "Kona." All of the claims of Plaintiffs and proposed Class members arise out of Defendants' conduct in manufacturing, marketing, and selling coffee falsely labeled as "Kona."

d. **Adequacy.** Plaintiffs will fairly and adequately represent and protect the interests of the proposed Class members. Plaintiffs' interests align with those of the class members, and Plaintiffs have no fundamental conflicts with the Class. Plaintiffs have retained counsel competent and experienced in Lanham Act, complex commercial, and class action litigation who will fairly and adequately represent the Class.

ANSWER: Plaintiffs' allegations in Paragraph 32 (a) through (d) are legal conclusions not requiring a response. To the extent a response is required, KIHNEK denies these allegations. KIHNEK specifically denies that class certification is appropriate or warranted here.

34. Plaintiffs meet the prerequisites of Rule 23(b)(2) because Defendants have acted and refused to act on grounds that apply generally to the Class, such that final injunctive relief or corresponding declaratory relief is appropriate respecting the Class as a whole. Defendants' sale

1 of coffee mislabeled as “Kona” coffee affected each Plaintiff and Class member in the same way.
 2 And the Lanham Act provides for injunctive relief to prevent the Defendants from continuing to
 3 sell coffee mislabeled as “Kona” coffee to prevent further harm to each Plaintiff and Class member.

4 **ANSWER:** The allegations in Paragraph 33 are legal conclusions not requiring a response.
 5 To the extent that a response is required, KIHNEKE denies these allegations, and specifically
 6 identifies the allegation that KIHNEKE “has affected each Plaintiff and class member *in the same*
 7 *way*” as false. Many of the purported class members identify *this lawsuit* as harming them, and
 8 not the conduct of defendants, as alleged herein. L&K does not sell any of the products described
 9 in this complaint and has not sold any since 2019. KIHNEKE specifically denies that class
 10 certification is appropriate or warranted here.

11
 12 35. Plaintiffs meet the prerequisites of Rule 23(b)(3):

13 a. The common questions of law and fact enumerated above predominate over
 14 any questions affecting only individual members of the Class, and a class action is superior to other
 15 methods for the fair and efficient adjudication of this controversy, as joinder of all members is
 16 impracticable.

17 b. Defendants are sophisticated parties with substantial resources, while
 18 proposed Class members generally are not, and prosecution of this litigation is likely to be
 19 expensive, as proved by the extensive scientific analysis that preceded the filing of this complaint.
 20 Because the economic damages suffered by any individual Class member from any individual
 21 defendant may be relatively modest compared to the expense and burden of individual litigation,
 22 it would be impracticable for proposed Class members to seek redress individually for Defendants’
 23 wrongful conduct.

24 **ANSWER:** The allegations in Paragraph 35 (a) and (b) are legal conclusions not requiring
 25 a response. To the extent that a response is required, KIHNEKE denies these allegations. KIHNEKE
 26 specifically denies that class certification is appropriate or warranted here. Further, Plaintiff Bruce
 27 Corker is a former partner and governor of the Seattle based law firm, Perkins Coie, which

1 represents some of the largest corporations in the world, including Boeing and Microsoft. Even if
 2 Corker lacked the resources to commence the “investigation” described in this paragraph, Corker
 3 at all times possessed the sophistication and legal acumen to understand his rights as alleged herein,
 4 and to retain counsel with the financial wherewithal to conduct that “investigation.” Thus, the
 5 allegation that plaintiffs lacked the sophistication and resources to timely commence the
 6 “investigation” they say was required to commence this lawsuit is false.

7

8 **V. STATUTES OF LIMITATIONS TOLLING**

9 36. **Discovery Rule.** Plaintiffs and Class members did not know and could not have
 10 known about their Lanham Act causes of action because, even assuming general awareness of the
 11 sales of fake Kona coffee, it is impossible to know that a particular defendant has sold such coffee
 12 without either (1) extensive and expensive chemical analysis of the coffee itself that very few
 13 laboratories can perform and which Plaintiffs and the Class members likely cannot afford to pay
 14 for on their own, or (2) documents and information in the exclusive possession of the defendant.
 15 Reasonable and diligent investigation did not and could not reveal a factual basis for the Lanham
 16 Act claims alleged in this complaint prior to the investigation and extensive scientific testing that
 17 led to the Complaint itself.

18 **ANSWER:** KIHNEK denies that Plaintiffs did not know, and could not have known, about
 19 their Lanham Act causes of action. Plaintiffs have admitted that the “scientific testing” was
 20 available to them more than five years before they filed their complaint. KIHNEK denies the
 21 remaining allegations in Paragraph 36. Further, Plaintiff Bruce Corker is a former partner and
 22 governor of the Seattle based law firm, Perkins Coie, which represents some of the largest
 23 corporations in the world, including Boeing and Microsoft. Even if Corker lacked the resources
 24 to commence the “investigation” described in this paragraph, Corker at all times possessed the
 25 sophistication and legal acumen to understand his rights as alleged herein, and to retain counsel
 26 with the financial wherewithal to conduct that “investigation.” Thus, the allegation that plaintiffs
 27 lacked the sophistication and resources to timely commence the “investigation” they say was

1 required to commence this lawsuit is false. KIHNEK denies that a “Discovery Rule” is available
 2 to plaintiffs in this action under both law and fact.

3

4 37. **Fraudulent Concealment.** Any applicable statutes of limitations have been tolled
 5 by Defendants’ knowing, active, and ongoing concealment of the facts as alleged in this
 6 Complaint. Defendants falsely labeled their coffee as “Kona” with the intent that other participants
 7 in the market, including Plaintiffs, Class members, and consumers, would be unable to determine
 8 whether or not the coffee was authentic Kona coffee. The truth about the origin of the coffee
 9 contained in Defendants’ products was information within Defendants’ exclusive control. The
 10 Defendants’ had actual knowledge of their acts of concealment. Under the Lanham Act,
 11 Defendants owed and owe to Plaintiffs and Class members the duty to refrain from making false
 12 designations of the origin of their products.

13 **ANSWER:** Plaintiffs’ allegation regarding KIHNEK’s duties under the Lanham Act is a
 14 legal conclusion that does not require a response. To the extent a response is required, KIHNEK
 15 denies this allegation. L&K does not sell any of the products described in this complaint and has
 16 not sold any since 2019. KIHNEK denies the remainder of the allegations in Paragraph 37.
 17 KIHNEK denies that a “Fraudulent Concealment” theory is available to plaintiffs in this action
 18 under both law and fact.

19

20 38. **EstoppeL**. Under the Lanham Act, Defendants owed and owe to Plaintiffs and Class
 21 members the duty to refrain from making false designations of the origin of the coffee in their
 22 coffee products. Defendants knowingly, affirmatively, and actively concealed the true character of
 23 their coffee, and that concealment continues. Defendants know and take unfair advantage of the
 24 market for authentic Kona coffee. Defendants are estopped from relying on any statute of
 25 limitations or advancing any laches argument in defense of this action.

26 **ANSWER:** Plaintiffs’ allegation regarding KIHNEK duties under the Lanham Act is a
 27 legal conclusion that does not require a response. To the extent a response is required, KIHNEK

1 denies this allegation. L&K does not sell any of the products described in this complaint and has
 2 not sold any since 2019. KIHNEK denies the remainder of the allegations in Paragraph 38.
 3 Further, Plaintiff Bruce Corker is a former partner and governor of the Seattle based law firm,
 4 Perkins Coie, which represents some of the largest corporations in the world, including Boeing
 5 and Microsoft. Even if Corker lacked the resources to commence the “investigation” described in
 6 this paragraph, Corker at all times possessed the sophistication and legal acumen to understand his
 7 rights as alleged herein, and to retain counsel with the financial wherewithal to conduct that
 8 “investigation.” Thus, the allegation that plaintiffs lacked the sophistication and resources to
 9 timely commence the “investigation” they say was required to commence this lawsuit is false.
 10 KIHNEK denies that an “Estopel” theory is available to plaintiffs in this action under both law
 11 and fact.

12 13 VI. FACTUAL BACKGROUND

14 39. Kona coffee is one of the rarest and most prized coffees in the world. Kona coffee
 15 is grown in the Kona District on the Big Island of Hawaii (the “Kona District”). *See* map below.
 16 *See also* Hawaii Administrative Rules (“HAR”) §4-143-3 (defining the geographic region of Kona
 17 as the “North Kona and South Kona districts on the island of Hawaii, as designated by the State of



1 Hawaii Tax Map"). The Kona District contains only 3,800 acres of land cultivated for Kona coffee
 2 production, which sharply limits the amount of Kona coffee that can be grown.

3 **ANSWER:** KIHNEK admits that coffee is grown in the Kona District on the Big Island of
 4 Hawaii. KIHNEK lacks sufficient information to admit or deny the remaining allegations in
 5 Paragraph 39, and therefore denies the same.

6

7 40. Only coffee grown in the Kona District can be sold as Kona coffee. Coffee grown
 8 outside of the Kona District, even if grown within the state of Hawaii, cannot be sold as Kona
 9 coffee.

10 **ANSWER:** The allegations in Paragraph 40 are legal conclusions not requiring a response.
 11 To the extent a response is required, KIHNEK denies these allegations.

12

13 41. Kona coffee has been grown in the Kona District since 1828. The Kona District's
 14 volcanic soil, elevation, rainfall, proximity to the Pacific Ocean, moderate temperatures, and
 15 sunshine all interact to create Kona coffee's distinctive characteristics. Kona coffee's unique
 16 flavor, aroma, and mouth feel are a direct result of this growing environment.

17 **ANSWER:** KIHNEK lacks sufficient information to admit or deny the allegations in
 18 Paragraph 41, and therefore denies the same. KIHNEK further denies the suggestion that Kona
 19 coffee can be identified *by consumers* by a uniform or consistent flavor or "mouth feel," or that all
 20 Kona coffee tastes the same.

21

22 42. The Kona name tells consumers that they are buying coffee grown in the Kona
 23 District. The name also tells consumers that the coffee has a distinctive flavor profile, and that the
 24 beans are of the highest quality. Consequently, consumers have been willing to pay a premium for
 25 Kona coffee.

26 **ANSWER:** KIHNEK denies that the Kona name tells consumers that they are buying
 27 coffee grown in the Kona District, that the beans are of the highest quality, or that consumers are

1 willing to pay a premium for Kona coffee for this reason. KIHNEKE is further unaware of any
 2 consumers who purchase L&K's Magnum coffee for \$7 or \$8 per pound who have any interest in
 3 paying \$35 to \$50 for a pound of *any* coffee. L&K does not sell any of the products described in
 4 this complaint and has not sold any since 2019. KIHNEKE lacks sufficient information to admit or
 5 deny the remaining allegations in Paragraph 42, and therefore denies the same.

6

7 43. Within the Kona District, between 600 and 1,000 farmers grow Kona coffee beans.
 8 The typical Kona farmer cultivates no more than five acres, which is a very small farming
 9 operation. These farms typically operate as family businesses.

10 **ANSWER:** KIHNEKE lacks sufficient information to admit or deny the allegations in
 11 Paragraph 43, and therefore denies the same.

12

13 44. Kona farmers produce approximately 2.7 million pounds of green Kona coffee each
 14 year. That compares to 20 billion pounds of green coffee produced worldwide. In other words,
 15 authentic Kona represents approximately 0.01% of worldwide coffee production. It is truly a
 16 premium product.

17 **ANSWER:** KIHNEKE denies that the amount of Kona coffee produced each year causes
 18 Kona coffee to be "truly a premium product." KIHNEKE lacks sufficient information to admit or
 19 deny the remaining allegations in Paragraph 44, and therefore denies the same.

20

21 45. But even though only 2.7 million pounds of authentic green Kona coffee is grown
 22 annually, over 20 million pounds of coffee labeled as "Kona" is sold at retail. That is physically
 23 impossible; someone is lying about the contents of their "Kona" products.

24 **ANSWER:** KIHNEKE denies it is lying about the contents of its Kona labeled products.
 25 KIHNEKE also denies that over 20 million pounds of coffee labeled as "Kona" is sold at retail
 26 because Plaintiff mischaracterizes use of the word "Kona" and includes within this category
 27 products that are clearly Kona blends or other types of coffee products. L&K does not sell any of

1 the products described in this complaint and has not sold any since 2019. KIHNE lacks sufficient
 2 information to admit or deny the remaining allegations in Paragraph 45, and therefore denies the
 3 same.

4

5 46. Defendants sell packaged coffee products that are presented to consumers as Kona
 6 coffee, but that actually contain cheap commodity coffee beans. Some packages contain trace
 7 amount of Kona coffee, while other packages contain no Kona coffee at all.

8 **ANSWER:** KIHNE admits L&K and certain Defendants sell L&K's coffee. KIHNE
 9 denies that L&K is falsely labeling its coffee products. L&K does not sell any of the products
 10 described in this complaint and has not sold any since 2019. KIHNE lacks sufficient information
 11 to admit or deny the allegations in Paragraph 45 as they pertain to other Defendants or other
 12 products, and therefore denies the same. KIHNE admits that its Kona blends sold between
 13 February 2015 and February 2019 contain a percentage of Kona coffee, but denies that it sold any
 14 of this product in the state of Hawaii. KIHNE denies the remaining allegations in Paragraph 46.

15

16 47. The malicious actions taken by these Defendants, both individually and
 17 collectively, cause significant harm to legitimate Kona farmers. First, the Defendants flood the
 18 market with what appears to be Kona coffee. This tremendous supply of counterfeit Kona coffee
 19 pushes prices down sharply. And that low pricing artificially restrains the profitability of legitimate
 20 Kona coffee farms. Second, the Defendants are selling run-of-the-mill commodity coffee and
 21 labeling it as Kona coffee. A consumer who tries that inferior product, thinking it is Kona coffee,
 22 will conclude that Kona coffee is not worth a premium price. That consumer will be unwilling to
 23 pay a premium price for Kona in the future.

24

ANSWER: KIHNE denies the allegations in Paragraph 46 of the Complaint as they
 25 pertain to L&K or certain retailer defendants' sale of L&K coffee products. The allegation that a
 26 consumer who buys L&K's \$7 to \$8 per pound Magnum coffee will conclude Kona coffee is not
 27 worth a premium price is a false allegation without any basis in fact, since it assumes, without any

1 basis in fact, that a consumer who buys Magnum's coffee has any interest in buying *any* coffee
 2 that retails for \$35 to \$50 per pound. L&K does not sell any of the products described in this
 3 complaint and has not sold any since 2019. KIHNE lacks sufficient information to admit or deny
 4 the allegations in Paragraph 47 as they pertain to other Defendants or other products, and therefore
 5 denies the same. KIHNE denies the remaining allegations in Paragraph 47.

6

7 48. This pricing damage is not just theoretical; it is visible in the marketplace. Kona
 8 coffee performs differently in the marketplace than similarly-situated specialty coffees. For
 9 example, the specialty coffee called Jamaica Blue Mountain Coffee ("Blue Mountain") is another
 10 premium coffee with a specific geographic designation of origin. Blue Mountain is grown in an
 11 annual volume that is comparable to Kona. And Blue Mountain is pushed into the same distribution
 12 channels. Yet Blue Mountain sells for between two and five times the price per pound of Kona.

13 **ANSWER:** Whether Jamaica Blue Mountain Coffee is a "specialty" or "premium coffee"
 14 is a statement of subjective opinion to which no response is required. To the extent a response is
 15 required, KIHNE denies that there is any damage to Kona coffee pricing (visible or otherwise)
 16 in the marketplace, and further denies that Jamaica Blue Mountain coffee sells for two to five times
 17 the price per pound of Kona coffee. Further, Jamaican Blue Mountain blends are also prevalent in
 18 the marketplace, with one distinction that is critical here: unlike plaintiffs, certain Jamaican Blue
 19 Mountain coffee farmers own and license the use of the Jamaican Blue Mountain name. In
 20 contrast, KIHNE is informed and believes that an administrative department of the State of
 21 Hawaii has the rights to the Kona name. L&K does not sell any of the products described in this
 22 complaint and has not sold any since 2019. L&K's withdrawal of its Kona labelled products from
 23 the marketplace has had no measurable impact on the price of Kona coffee. KIHNE is not jointly
 24 liable for the alleged conduct of all other defendants named in this lawsuit. KIHNE lacks
 25 sufficient information to admit or deny the remaining allegations in Paragraph 48, and therefore
 26 denies the same.

27

1 49. The impact of lower Kona pricing on the Plaintiffs and the Class is significant.
 2 Growing Kona coffee is a very expensive proposition, largely because the topography of the Kona
 3 District makes it nearly impossible to use modern farming machinery. Kona farms are therefore
 4 manual farming operations, with significant labor required to plant and harvest the coffee.

5 **ANSWER:** KIHNEKE denies that there is a lower price of Kona coffee beans as the result
 6 of L&K's use of the word Kona on its packaging. There is no joint liability among defendants
 7 herein. L&K does not sell any of the products described in this complaint and has not sold any
 8 since 2019. KIHNEKE lacks sufficient information to admit or deny the allegations in Paragraph
 9 49, and therefore denies the same.

10
 11 50. Despite the fact that they sell a premium product, the typical Kona coffee farmer,
 12 who is forced to sell their Kona coffee at a depressed price due to the actions of the Defendants,
 13 struggle to turn a significant profit from their Kona coffee farming operation. Sellers of premium
 14 products with worldwide reputations typically enjoy above-market profit margins, reflecting the
 15 desirability of the product. The fact that so many Kona farmers struggle is shocking.

16 **ANSWER:** KIHNEKE denies that Plaintiffs sell a "premium product." KIHNEKE lacks
 17 sufficient information to admit or deny whether the typical Kona coffee farmer struggles to turn a
 18 significant profit, and therefore denies that allegation. KIHNEKE denies that his or L&K's conduct,
 19 as alleged herein, has "depressed" Kona coffee prices. KIHNEKE is not jointly responsible for the
 20 alleged conduct of all other defendants. KIHNEKE denies the remaining allegations in Paragraph
 21 50.

22
 23 51. Kona farmers have suspected bad actors in the Kona marketplace for years. The
 24 problem has always been determining what was actually in a particular bag as that information has
 25 been concealed from the Kona farmers. Modern chemistry can now provide answers to that
 26 question.

1 **ANSWER:** KIHNEK admits that Plaintiffs have known of their claims for years and that
2 their claims are barred by laches and/or the applicable statute of limitations. L&K does not sell
3 any of the products described in this complaint and has not sold any since 2019. Plaintiffs have
4 admitted that the “modern chemistry” was available to them more than five years before they filed
5 their complaint. Further, Plaintiff Bruce Corker is a former partner and governor of the Seattle
6 based law firm, Perkins Coie, which represents some of the largest corporations in the world,
7 including Boeing and Microsoft. Even if Corker lacked the resources to commence the
8 investigation referred to in this paragraph, Corker at all times possessed the sophistication and
9 legal acumen to understand his rights as alleged herein, and to retain counsel with the financial
10 wherewithal to conduct that investigation. KIHNEK denies the remaining allegations in Paragraph
11 51.

VII. ELEMENTAL TESTING OF COFFEE

14 52. Kona coffee is grown in a very specific geographic area on the Big Island of Hawaii.
15 That geographic area has a distinctive soil composition, due largely to its proximity to volcanoes.
16 And that geographic area has distinctive humidity and rainfall, due largely to its proximity to the
17 Pacific Ocean.

ANSWER: KIHNE lacks sufficient information to admit or deny the allegations in Paragraph 52, and therefore denies the same.

53. As a result of the local soil and rainfall, certain elements are present in high concentrations in Kona coffee beans. If a particular package of coffee truly contains Kona coffee beans, these elements tend to be present in high concentrations. If these elements are not present in high concentrations, then the package is unlikely to contain Kona coffee.

ANSWER: KIHNE lacks sufficient information to admit or deny the allegations in Paragraph 53, and therefore denies the same.

1 54. Moreover, as a direct result of the local soil and rainfall, certain elements are not
 2 present in high concentrations in Kona coffee beans. If a particular package of coffee truly contains
 3 only Kona coffee beans, then these elements tend not to be present in high concentrations. If they
 4 are present in high concentrations, then the package is unlikely to contain Kona coffee.

5 **ANSWER:** KIHNE lacks sufficient information to admit or deny the allegations in
 6 Paragraph 54, and therefore denies the same.

7
 8 55. Scientists can examine the concentration of each of the elements that are found in
 9 Kona coffee beans, as well as the concentration of each of the elements that are not found in Kona
 10 coffee beans. By combining this information, scientists can determine with high confidence
 11 whether a particular package is authentic Kona coffee.

12 **ANSWER:** KIHNE lacks sufficient information to admit or deny the allegations in
 13 Paragraph 55, and therefore denies the same.

14
 15 56. In practice, instead of looking at the concentration of an isolated element like
 16 barium (Ba) or nickel (Ni), scientists examine the *ratio* of the concentrations of *pairs* of elements.
 17 The reason for this approach is simple. If you were to roast coffee beans for ten minutes longer,
 18 you would not impact the amount of barium or nickel in the sample, but you would burn away
 19 more of the overall coffee bean. The concentration of barium would therefore increase, since it is
 20 defined as the mass of barium divided by the mass of the total bean. And the concentration of
 21 nickel would therefore increase, since it is defined as the mass of nickel divided by the mass of the
 22 total bean. But the ratio of the concentration of barium to the concentration of nickel would be
 23 unchanged. And since the lab does not know how long particular coffee samples were roasted by
 24 the Defendants, the scientists focus on measures that do not change with roasting.

25 **ANSWER:** KIHNE lacks sufficient information to admit or deny the allegations in
 26 Paragraph 56, and therefore denies the same.

1 57. Having tested barium and nickel, scientists have determined that authentic Kona
 2 coffee has a *ratio* of the concentration of barium to the concentration of nickel, also called the
 3 *relative concentration*, that falls within a certain range. If an unknown sample has a relative
 4 concentration within that range, it may or may not be Kona. But if an unknown sample has a
 5 relative concentration clearly outside that range, it is highly unlikely to be Kona. (This analysis
 6 makes intuitive sense. A veterinarian knows that dogs weigh between 1 and 325 pounds. If that
 7 veterinarian sees an animal that weighs 100 pounds, which is clearly in the range of observed dog
 8 weights, the veterinarian would say that the animal may or may not be a dog. But if that
 9 veterinarian sees an animal that weighs 500 pounds, which is well outside the range of previously-
 10 observed dog weights, the veterinarian would immediately note that the animal is highly unlikely
 11 to be a dog.

12 **ANSWER:** KIHNE lacks sufficient information to admit or deny the allegations in
 13 Paragraph 57, and therefore denies the same.

14
 15 58. Determining the concentrations of particular elements and *isotopes* (which are
 16 simply variations of a particular element) is a process that requires significant scientific expertise
 17 and expensive instrumentation. The scientific techniques of *elemental analysis* and *isotopic*
 18 *analysis*¹ are widely accepted in the scientific community, and have been used in studies of various
 19 food products (including coffee). Unfortunately, these tests are very expensive. For that reason,
 20 the growers have never before had access to this kind of evidence.

21 **ANSWER:** Plaintiffs have admitted that “these tests” were available to them more than
 22 five years before they filed their complaint. Further, Plaintiff Bruce Corker is a former partner and
 23 governor of the Seattle based law firm, Perkins Coie, which represents some of the largest
 24 corporations in the world, including Boeing and Microsoft. Even if Corker lacked the resources
 25 to commence the investigation referred to in this paragraph, Corker at all times possessed the
 26

27 ¹ Two different types of isotopic testing have been performed to confirm whether a defendant has falsely designated
 Kona as the origin of its coffee products. The first test examined strontium isotopes, and the second test examined
 hydrogen and oxygen isotopes.

1 sophistication and legal acumen to understand his rights as alleged herein, and to retain counsel
 2 with the financial wherewithal to conduct that investigation. KIHNE lacks sufficient information
 3 to admit or deny the allegations in Paragraph 58, and therefore denies the same.

4

5 59. It is important to recognize that Defendants (who are likely to protest any and all
 6 aspects of scientific testing) could prove their innocence without retaining a single scientist, and
 7 without conducting a single lab test. They could simply provide evidence of where they bought
 8 legitimate Kona coffee that they have been selling at retail. Any legitimate Kona coffee products
 9 must ultimately have been grown on a farm owned by a Plaintiff or prospective Class member.

10 **ANSWER:** KIHNE or L&K has provided this “evidence” to plaintiffs. Further, there was
 11 no need to sue KIHNE or L&K to get it. When plaintiffs told L&K they objected to L&K’s use
 12 of the word Kona on its packaging in February 2019, L&K not only ceased use of the word Kona
 13 on its packaging, it stopped using Kona beans in its products. KIHNE denies the remaining
 14 allegations in Paragraph 59.

15

16 60. It is also important to recognize that Defendants are sophisticated participants in
 17 the premium coffee marketplace. On information and belief, certain named defendants employ
 18 professional coffee buyers whose job function is to source coffees for their products. In other
 19 words, much like a professional jeweler could never plausibly claim to be confused about the
 20 difference between a Rolex and a Timex, these sophisticated defendants cannot plausibly claim to
 21 be confused about the coffee they are procuring. The Defendants and their buyers know exactly
 22 what they are buying, and what they are selling.

23 **ANSWER:** The first sentence of Paragraph 60 is a statement of subjective opinion, not a
 24 factual allegation capable of admission or denial. To the extent that a response is required,
 25 KIHNE denies that it is important to recognize whether or not the Defendants are sophisticated
 26 participants in the premium coffee marketplace. KIHNE admits that L&K has employees whose
 27 job functions include sourcing coffee beans for its coffee products. Plaintiffs’ allegation that

1 Defendants cannot plausibly claim to be confused about the coffee they are procuring is a legal
 2 conclusion not requiring a response. L&K does not sell any of the products described in this
 3 complaint and has not sold any since 2019. KIHNE lacks sufficient information to admit or deny
 4 the allegations in Paragraph 60, and therefore denies the same.

5

6 **VIII. THE DEFENDANTS' PRODUCTS AND WRONGFUL ACTS**

7 61. Defendants use marketing and packaging that tell consumers that they are buying
 8 packages of Kona coffee, but those packages do not contain Kona coffee.

9 **ANSWER:** KIHNE denies the allegations in Paragraph 61 to the extent they pertain to
 10 L&K coffee products. L&K does not sell any of the products described in this complaint and has
 11 not sold any since 2019. KIHNE lacks sufficient information to admit or deny the allegations in
 12 Paragraph 61 to the extent they pertain to other Defendants, and therefore denies the same.

13

14 62. For each Defendant, this complaint includes one or more examples of particular
 15 products in their product line. The examples provided in this complaint are intended to be
 16 representative, and not necessarily exhaustive, of the deceptive products manufactured and/or sold
 17 by each defendant. Sampling has shown that nearly every product labeled "Kona" in their product
 18 lines misrepresents the origin of the coffee beans contained in the package. Given the scarcity of
 19 authentic Kona coffee (remember that Kona coffee represents only 0.01% of the worldwide supply
 20 of coffee) and the high profitability of marketing commodity coffee as if it were Kona coffee, it is
 21 no surprise that any defendant that is willing to engage in such deceptive practices would
 22 consistently practice their deception across all product lines. An unscrupulous merchant selling
 23 counterfeit Rolex watches on a street corner tends not to mix a real Rolex into inventory every
 24 once in a while.

25 **ANSWER:** KIHNE admits that the Complaint includes certain images of coffee
 26 products. KIHNE denies that the sampling referenced in Paragraph 62 demonstrates that L&K
 27 coffee products misrepresent the origin of the coffee beans contained therein, and further denies

1 that L&K coffee products are highly profitable. KIHNEKE otherwise denies the matter stated in this
 2 paragraph. L&K does not sell any of the products described in this complaint and has not sold any
 3 since 2019. KIHNEKE lacks sufficient information to admit or deny the allegations in Paragraph 62
 4 to the extent they pertain to other Defendants and other products, and therefore denies the same.

5

6 63. For each example product, this complaint includes two graphs that shed light on the
 7 true contents of the package. The graphs are based on the ratios of elemental concentrations
 8 discussed above. The graphs included in this complaint are only a subset of the data collected on
 9 each deceptive product. For each product, additional data reinforces the results shown below.

10 **ANSWER:** KIHNEKE denies that the graphs referenced in Paragraph 63 demonstrate that
 11 the L&K coffee products do not contain Kona coffee beans. KIHNEKE further denies that the graphs
 12 are based on the ratios of elemental concentrations in L&K's coffee. L&K does not sell any of the
 13 products described in this complaint and has not sold any since 2019. KIHNEKE lacks sufficient
 14 information to admit or deny the remaining allegations in Paragraph 63, and therefore denies the
 15 same.

16

17 64. For any particular coffee sample, a scientist can calculate the ratio between the concentration of strontium (Sr), and the concentration of zinc (Zn). For authentic Kona coffee, that
 18 ratio falls within a narrow range. A scientist can similarly calculate the ratio between the concentration of barium (Ba), and the concentration of nickel (Ni). For authentic Kona coffee, that
 19 ratio also falls within a narrow range. Those two ratios can be plotted on a scatter plot, creating a
 20 visual that indicates whether a particular sample has concentration ratios that are consistent with
 21 Kona coffee. The blue dots in each scatter plot below show the observed ratios from over one
 22 hundred samples of authentic Kona coffee. The red diamonds show the observed ratios from the
 23 coffee products sold by Defendants. Those red diamonds are far outside the observed ranges for
 24 Kona, indicating that the Defendants' designation of the origin of its coffee products as Kona is
 25 false.

1 **ANSWER:** KIHNE lacks sufficient knowledge to admit or deny what plaintiffs' so-
 2 called "scientists" did or discovered about L&K's coffees, and therefore denies the allegations in
 3 Paragraph 64. L&K does not sell any of the products described in this complaint and has not sold
 4 any since 2019.

5

6 65. For any coffee sample, a scientist can also calculate the ratio between the concentration of cobalt (Co), and the concentration of zinc (Zn). For authentic Kona, that ratio
 7 falls within a narrow range. And a scientist can calculate the ratio between the concentration of
 8 manganese (Mn), and the concentration of nickel (Ni). For authentic Kona, that ratio also falls
 9 within a narrow range. As with the earlier ratios, those two ratios can be plotted on a scatter plot,
 10 creating another visual that indicates whether a particular sample has concentration ratios that are
 11 consistent with Kona coffee. The blue dots in each scatter plot below show the observed ratios
 12 from over one hundred samples of authentic Kona coffee. The red diamonds show the observed
 13 ratios from the coffee products sold by Defendants. Those red diamonds are far outside the
 14 observed ranges for Kona, indicating that the Defendants' designation of Kona as the origin of its
 15 coffee products is false.

16 **ANSWER:** KIHNE lacks sufficient knowledge to admit or deny what plaintiffs' so-
 17 called "scientists" did or discovered about L&K's coffees, and therefore denies the allegations in
 18 Paragraph 65. L&K does not sell any of the products described in this complaint and has not sold
 19 any since 2019.

21

22 66. *PACIFIC COFFEE* ("MAUI COFFEE COMPANY" OR "MCC"). The Maui
 23 Coffee Company packages are unequivocal. The packages prominently say either "100% Kona
 24 Coffee" or "100% Kona Macadamia Nut" in large block print on the front panel. Seeing that
 25 packaging on a shelf or online, a consumer would conclude that the package contains no coffee
 26 beans other than Kona coffee beans.

27

1 **ANSWER:** KIHNEK lacks sufficient information to admit or deny the allegations in
 2 Paragraph 66, and therefore denies the same.
 3

4 67. MCC falsely designates the geographic origin of its “Kona” coffee products with
 5 the prominent placement of 100% KONA on the front of the packaging. MCC furthers this
 6 deception through its product descriptions published on its online store. MCC deceptively
 7 describes its “100% Kona Coffee” product as follows:

8 Without a doubt, one of the world’s most sought-after beans by coffee
 9 connoisseurs! Taste the full rich flavor of 100% Kona Coffee and experience the
 10 magic of the Kona Coast for yourself. Our 100% Pure Kona Coffee has a medium
 11 to full body with mild acidity and will be delivered fresh to your doorstep. Take a
 12 trip to the Kona Coast when you experience the full rich flavor of our 100% Pure
 13 Kona Coffee.

14 MCC describes its “100% Kona Macadamia Nut” product as “Kona goodness with a touch of
 15 island-grown macadamia nuts. It doesn’t get any more Hawaiian than that.” MCC also deceptively
 16 advertises its coffee products as “100% Kona” on its Internet advertising. The deceptive product
 17 descriptions are designed to mislead consumers into believing that MCC’s products contain coffee
 18 from Hawaii, and more specifically the Kona region of Hawaii. The deceptive marketing, product
 19 names, and package designs are all intended to trade off the reputation and goodwill of the Kona
 20 name. They deliberately mislead the consumer into believing that MCC coffee products contain
 21 nothing but premium Kona coffee beans in order to justify the high price MCC charges for what
 22 are actually ordinary commodity coffee beans. Below are representative images of MCC’s
 23 deceptive “Kona” coffee products.

1 **ANSWER:** KIHNEK lacks sufficient information to admit or deny the allegations in
 2 Paragraph 67, and therefore denies the same.



12 **Figure MCC-1**



12 **Figure MCC-2**

14 68. But while consumers would reasonably believe that the packages in Figures MCC-
 15 1 and MCC-2 are pure Kona coffee, the lab tests tell a different story. On the below scatter plot
 16 showing the strontium-to-zinc ratio and the barium-to-nickel ratio, these accused products (marked
 17 by red diamonds) are well outside the range of authentic Kona. In other words, MCC's designation
 18 of Kona as the origin of the coffee in these products is false.

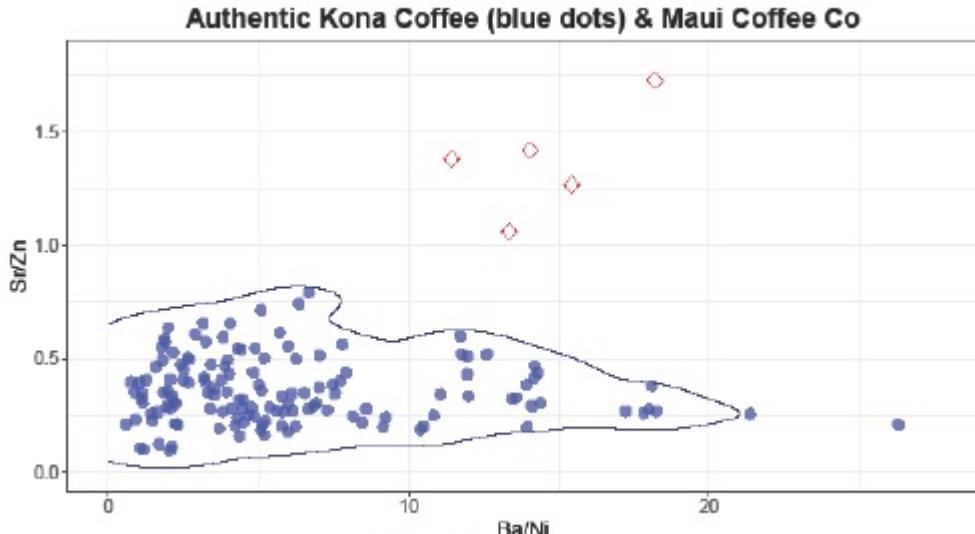


Figure MCC-A.

ANSWER: KIHNE lacks sufficient information to admit or deny the allegations in Paragraph 68, and therefore denies the same.

69. The below scatter plot showing the cobalt-to-zinc ratio and the manganese-to-nickel ratio reinforces the same conclusion for the MCC products that were tested. These accused MCC products (marked by red diamonds) are well outside the range of authentic Kona. In other words, MCC's designation of Kona as the origin of the coffee in these products is false.

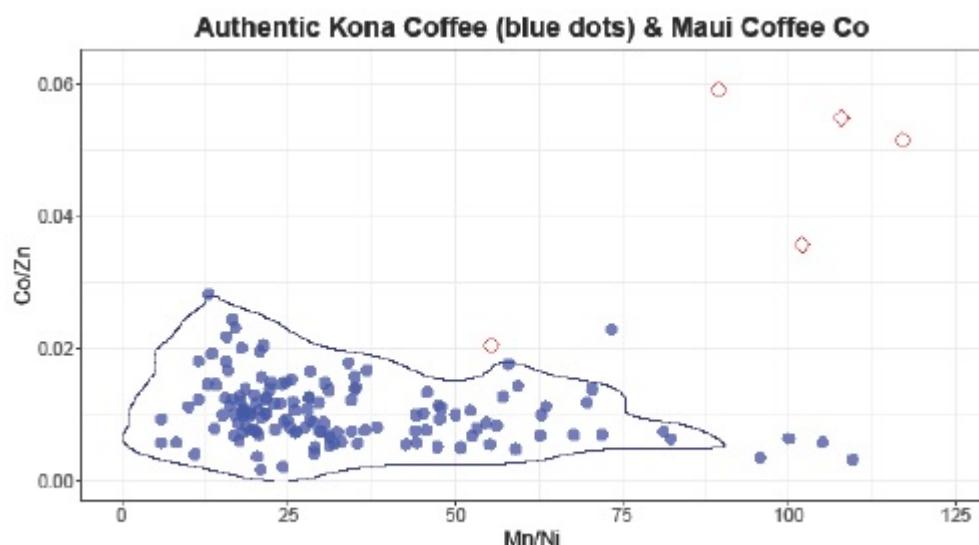


Figure MCC-B

1
2 **ANSWER:** KIHNE lacks sufficient information to admit or deny the allegations in
3 Paragraph 69, and therefore denies the same.
4

5 70. *MULVADI CORPORATION.* The front of the Mulvadi package says “100% Kona
6 Coffee” in two distinct places. The main product banner is “Pure 100% Kona Coffee.” And there
7 is a misleading “Official Seal” that says “100% Kona Coffee.” The purpose of the language that
8 Mulvadi features on the face of its packaging is to mislead consumers into believing that Mulvadi
9 coffee products come from the Kona District.

10 **ANSWER:** KIHNE lacks sufficient information to admit or deny the allegations in
11 Paragraph 70, and therefore denies the same.
12

13 71. Mulvadi deceptively places a gold sticker on its packaging, which it presents as the
14 “Official Seal” of the “Independent Kona Coffee Growers Association,” proclaiming that the
15 product is “100% Kona Coffee” from the “Big Island of Hawaii.” On information and belief, there
16 is no such association that is recognized for certifying Kona coffee products as 100% authentic.
17 Instead, the “seal” is a marketing ploy intended to deceive consumers as to the source of origin of
18 the coffee sold by Mulvadi. The deceptive marketing, product names, and package designs are all
19 intended to trade off the reputation and goodwill of the Kona name. They deliberately mislead the
20 consumer into believing that Mulvadi coffee products contain premium Kona coffee beans,
21 justifying the high price Mulvadi charges for what is actually ordinary commodity coffee. Below
22
23
24
25
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27

1 are representative images of Mulvadi's deceptive "Kona" coffee products, including an image othe
 2 "seal."



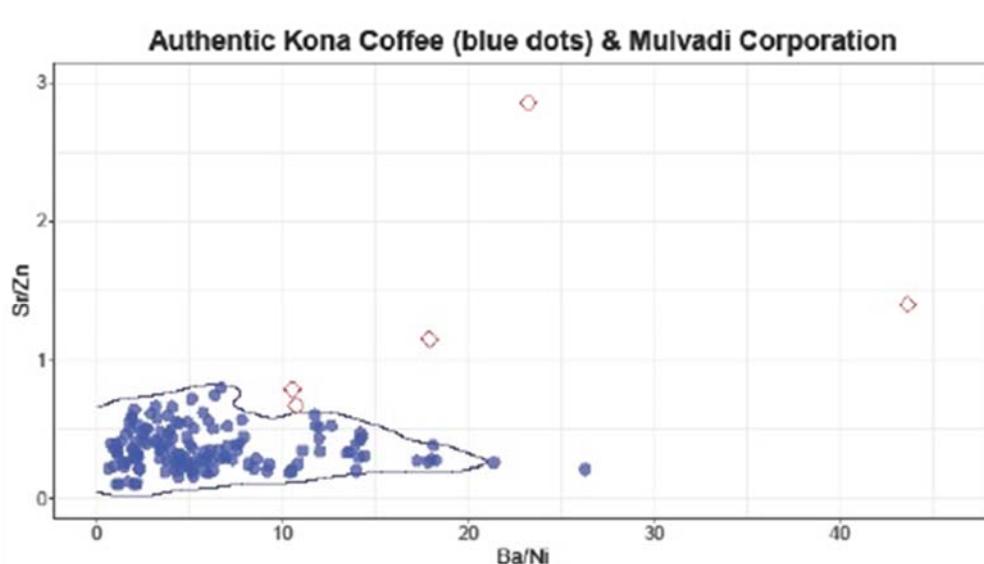
12 **Figure MUL-1**



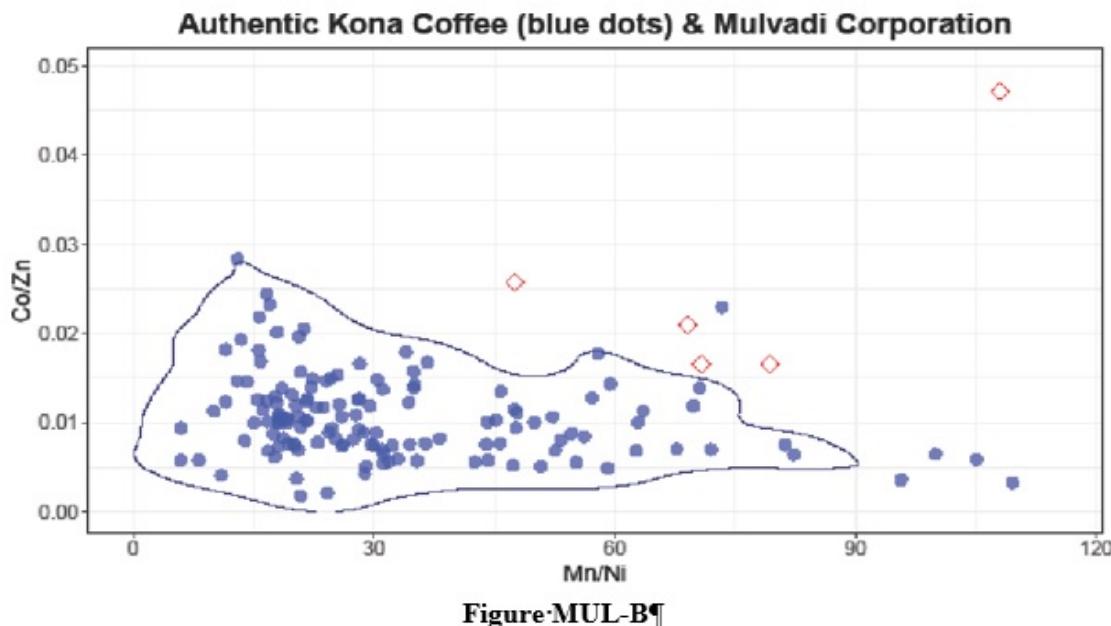
12 **Figure MUL-2**

14 **ANSWER:** KIHNEK lacks sufficient information to admit or deny the allegations in
 15 Paragraph 71, and therefore denies the same.

17 72. The Mulvadi package is unequivocal as to its contents; it says "100% Kona Coffee"
 18 twice on its front face. Seeing that packaging on a shelf or online, any consumer would conclude
 19 that the package contains only Kona coffee beans. But the lab tests tell a different story. On the
 20 below scatter plot showing the strontium-to-zinc ratio and the barium-to-nickel ratio, these accused
 21 products (marked by red diamonds) are well outside the range of authentic Kona. These packages
 22 are clearly not Kona. In other words, Mulvadi's designation of Kona as the origin of the coffee is
 23 false.



The below scatter plot showing the cobalt-to-zinc ratio and the manganese-to-nickel ratio reinforces the same conclusion. These accused products (marked by red diamonds) are well outside the range of authentic Kona. In other words, Mulvadi's designation of Kona as the origin of the coffee in these products is false.



1 **ANSWER:** KIHNEK lacks sufficient information to admit or deny the allegations in
 2 Paragraph 72, and therefore denies the same.

3

4 73. *HAWAIIAN ISLES KONA COFFEE LTD., LLC.* Hawaiian Isles falsely designates
 5 the geographic origin of its “Kona” coffee products with the prominent placement of KONA on
 6 the front of the packaging. Hawaiian Isles advertises its coffee products nationally on the Internet
 7 and with digital marketing campaigns through social media sites such as Facebook. With its
 8 marketing campaigns, Hawaiian Isles uses deceptive taglines and slogans such as “Taste the Kona
 9 Difference,” “Bring Hawaii Home,” “Give the Gift of Aloha,” “Drink Kona Coffee and Relax,”
 10 and “I Want My Toes in the Sand and Kona Coffee in My Hand,” among others. The deceptive
 11 slogans are designed to mislead consumers into believing that Hawaiian Isles coffee products
 12 primarily contain coffee from Hawaii, and more specifically the Kona District of Hawaii. In
 13 addition, Hawaiian Isles uses deceptive names for its products intended to mislead consumers into
 14 believing that the coffee products contain a significant amount of Kona coffee. The deceptive
 15 product names include “Kona Classic,” “Kona Sunrise,” “Kona Hazelnut,” and “Kona Vanilla
 16 Macadamia Nut.” Hawaiian Isles also designs its product packaging with imagery, text, and
 17 advertising slogans intended to mislead the consumer into believing that the coffee product
 18 contains coffee beans predominantly, if not exclusively, grown in Hawaii, and specifically in the
 19 Kona District. The deceptive marketing slogans, product names, and package designs are all
 20 intended to trade off the reputation and goodwill of the Kona name. They deliberately mislead the
 21 consumer into believing that Hawaiian Isles coffee products contain significant amounts of
 22 premium Kona coffee beans in order to justify the high price Hawaiian Isles charges for ordinary
 23 commodity coffee.

24 **ANSWER:** KIHNEK lacks sufficient information to admit or deny the allegations in
 25 Paragraph 73, and therefore denies the same.

74. Below are several examples of the deceptive "Kona" products sold by Hawaiian Isles.

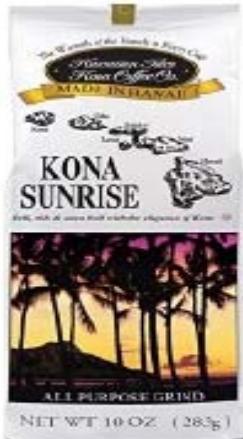


Figure HI-1



Figure HI-2

The packages themselves state “Made in Hawaii” on a banner on the front, above a map of Hawaii and a photograph of palm trees at sunset. The marketing copy on the side of the package states that the contents were “freshly roasted and packaged in Hawaii.” The package also states that “Kona Coffee is grown on the Big Island’s Kona Coast.” Given Hawaiian Isles’ unequivocal designation of “Kona” as the origin of the coffee in its products, consumers buying these products would reasonably believe that Kona, and only Kona, was the origin of the coffee contained therein.

ANSWER: KIHNE lacks sufficient information to admit or deny the allegations in Paragraph 74, and therefore denies the same.

75. But while consumers would reasonably believe that the packages in Figures HI-1 and HI-2 contain coffee that originates exclusively from Kona, the lab tests tell a different story. On the below scatter plot showing the strontium-to-zinc ratio and the barium-to-nickel ratio, these accused products (marked by red diamonds) are well outside the range of authentic Kona. In other words, the science indicates that the coffee contained in the Hawaiian Isles packages is highly unlikely to originate from Kona.

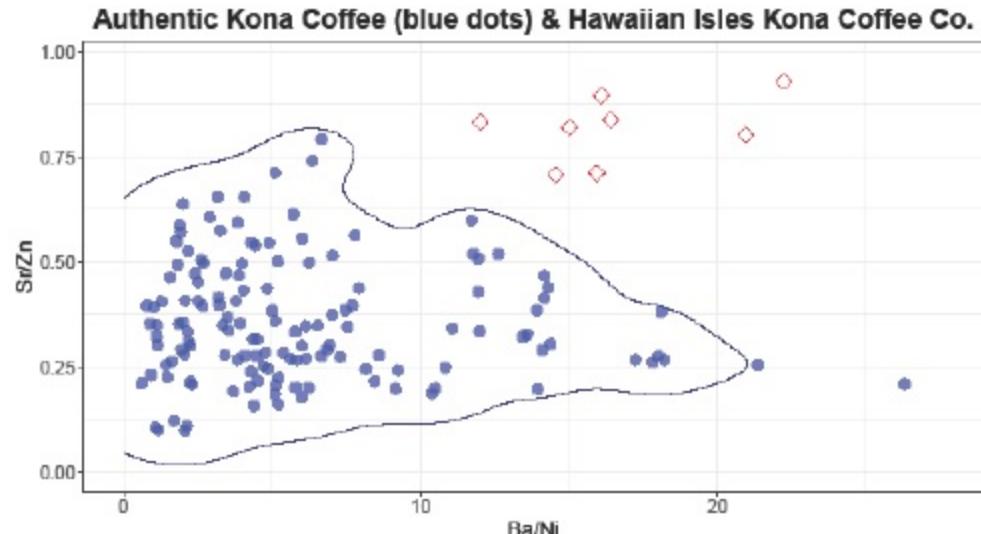


Figure HI-A

The below scatter plot showing the cobalt-to-zinc ratio and the manganese-to-nickel ratio reinforces the same conclusion. These accused products (marked by red diamonds) are well outside the range of authentic Kona. Again, the science indicates that the coffee contained in the Hawaiian Isles packages is highly unlikely to originate from Kona. In other words, Hawaiian Isles' designation of Kona as the origin of the coffee in these products is false

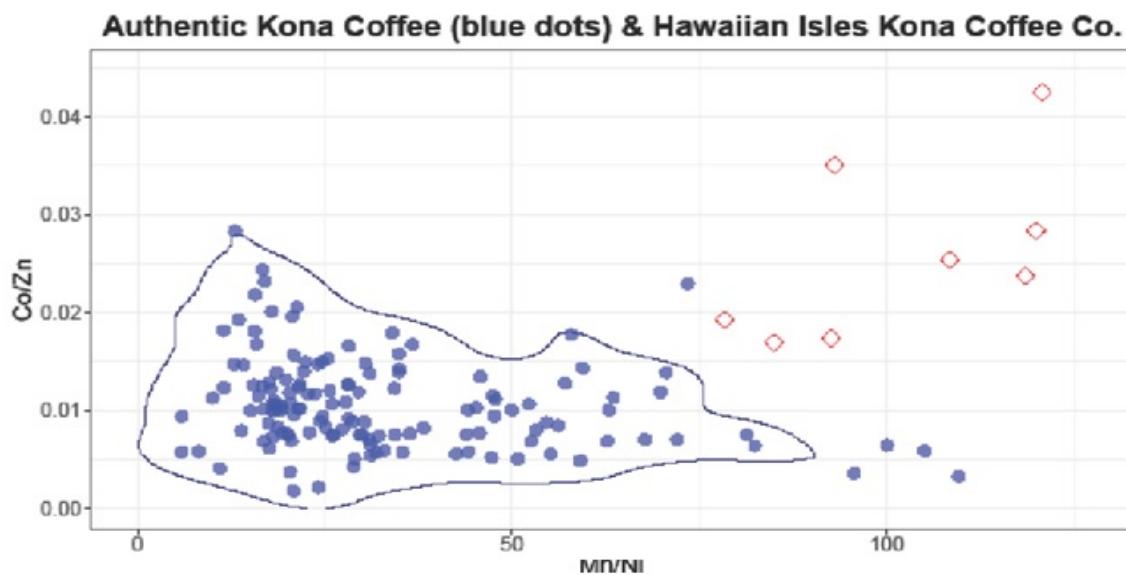


Figure HI-B

1 **ANSWER:** KIHNEK lacks sufficient information to admit or deny the allegations in
 2 Paragraph 75, and therefore denies the same.

3

4 76. In fact, these bags appear to contain very little Kona coffee, if any. As a simple
 5 indicator, note that authentic Kona has an average of less than forty times (40x) as much
 6 manganese as nickel. In contrast, some Hawaiian Isles samples have one hundred twenty times
 7 (120x) as much manganese as nickel. This evidence, and similar evidence from many other ratios,
 8 leads to the conclusion that there must be very little Kona in this package. In other words, Hawaiian
 9 Isles' designation of Kona as the origin of the coffee in these products is false.

10 **ANSWER:** KIHNEK lacks sufficient information to admit or deny the allegations in
 11 Paragraph 76, and therefore denies the same.

12

13 77. Even a consumer understanding this package to be a blend of Kona and other
 14 coffees (which is a conclusion that very few consumers would draw based on this particular
 15 packaging) would expect the package to contain a meaningful percentage of Kona beans. Given
 16 the deviation in the concentration ratios, though, it is implausible that this package meets those
 17 consumer expectations.

18 **ANSWER:** KIHNEK denies all allegations in paragraph 77.

19

20 78. *GOLD COFFEE ROASTERS, INC.* Hawaiian Gold falsely designates the
 21 geographic origin of its "Kona" coffee products with the prominent placement of KONA on the
 22 front of the packaging. Hawaiian Gold boasts on its packaging and on its website,
 23 www.goldcoffee.com, that the "Kona" coffee contained in its coffee products is cultivated on a
 24 900-acre plantation in the Kona District, which Hawaiian Gold commonly refers to as the Parry
 25 Estates. With its marketing, Hawaiian Gold uses deceptive taglines and slogans such as "Grown
 26 in paradise. Enjoyed worldwide," "The Hawaiian Difference," "From our land to your hand"
 27 (superimposed over a photograph of a tropical island), and "Striking flavor. Exotic character"

1 (superimposed over an image of lava flow). The deceptive slogans and imagery are designed to
 2 mislead consumers into believing that Hawaiian Gold coffee products contain coffee from Hawaii,
 3 and more specifically the Kona District of Hawaii. The deceptive product packaging prominently
 4 features the word “Kona” in large font and includes pictures of volcanic mountains, Bird of
 5 Paradise flowers, and other imagery indicative of Hawaii. The deceptive marketing, product
 6 names, and package designs are all intended to trade off the reputation and goodwill of the Kona
 7 name. They deliberately mislead the consumer into believing that Hawaiian Gold coffee products
 8 contain significant amounts of premium Kona coffee beans in order to justify the high price
 9 Hawaiian Gold charges for what is actually ordinary commodity coffee.

10 **ANSWER:** KIHNE lacks sufficient information to admit or deny the allegations in
 11 Paragraph 78, and therefore denies the same.

12

13 79. Below are representative images of Hawaiian Gold’s deceptive “Kona” coffee
 14 products.



24 **Figure HG-1**



24 **Figure HG-2**

25
 26 **ANSWER:** KIHNE lacks sufficient information to admit or deny the allegations in
 27 Paragraph 79, and therefore denies the same.

1 80. But while consumers would reasonably believe that the coffee in package HG-1
2 predominantly consisted of Kona beans, and the coffee in HG-2 contained nothing but 100% Kona,
3 the lab tests tell a different story. On the below scatter plot showing the strontium-to-zinc ratio and
4 the barium-to-nickel ratio, these accused products (marked by red diamonds) are well outside the
5 range of authentic Kona. In other words, Hawaiian Gold's designation of Kona as the origin of the
6 coffee in these products is false.

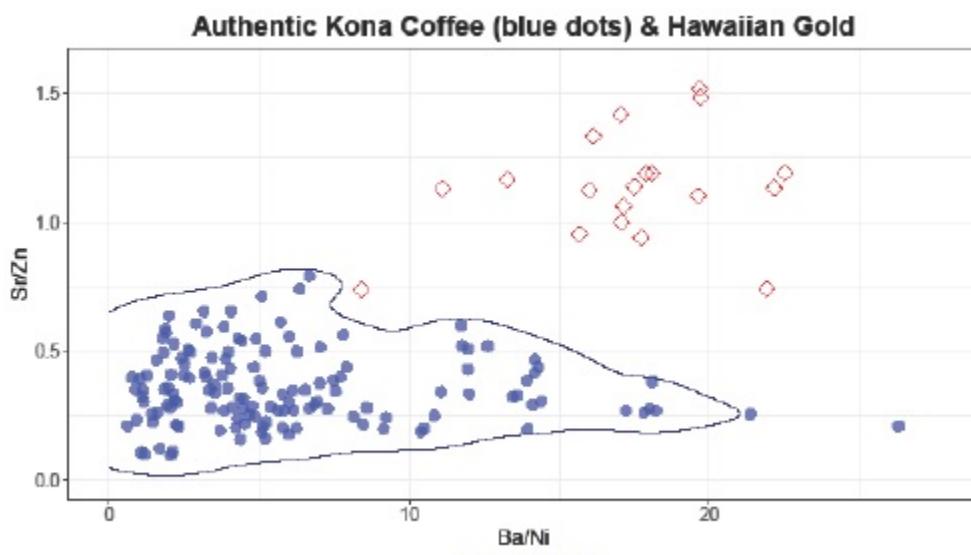


Figure HG-A

ANSWER: KIHNE lacks sufficient information to admit or deny the allegations in Paragraph 80, and therefore denies the same.

81. The below scatter plot showing the cobalt-to-zinc ratio and the manganese-to-nickel ratio reinforces the same conclusion. These accused products (marked by red diamonds) are well outside the range of authentic Kona. In other words, Hawaiian Gold's designation of Kona as the origin of the coffee in these products is false.

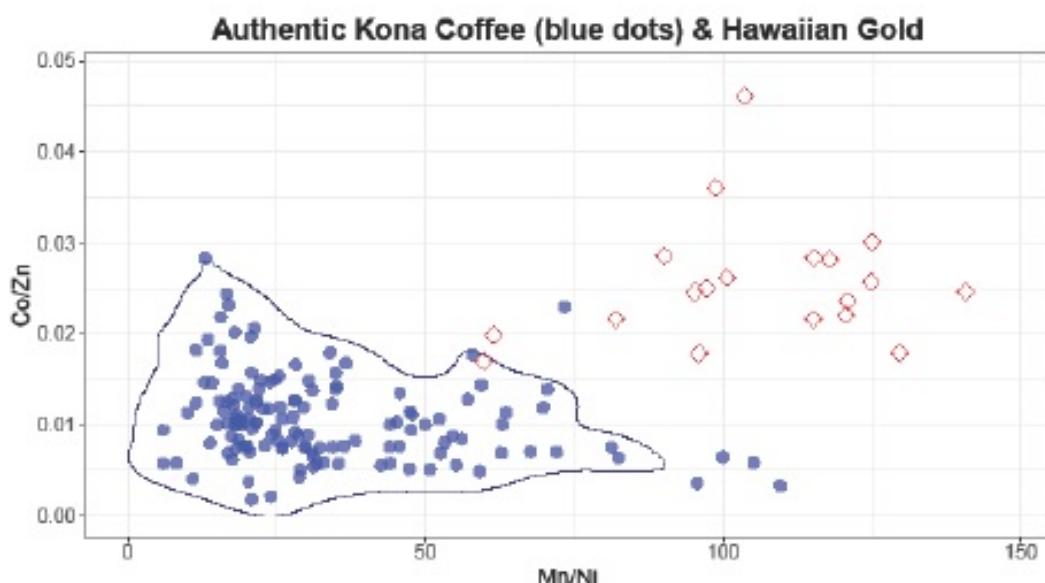


Figure HG-B

ANSWER: KIHNEK lacks sufficient information to admit or deny the allegations in Paragraph 81, and therefore denies the same.

82. In fact, the tested Hawaiian Gold products contain very little Kona coffee, if any. As an indicator, note that authentic Kona has an average of less than forty times (40x) as much manganese as nickel. In contrast, tests show that one of the Hawaiian Gold samples has roughly one hundred forty times (140x) as much manganese as nickel. This evidence, and similar evidence from many other ratios, leads to the conclusion that there is very little Kona in this bag.

ANSWER: KIHNEK lacks sufficient information to admit or deny the allegations in Paragraph 82, and therefore denies the same.

83. Even a consumer understanding the coffee in the package shown in HG-1 to be a blend of Kona and other coffees (a conclusion that very few consumers would draw based on this particular packaging) would expect the package to contain a meaningful percentage of Kona beans.

1 Given the deviation in the concentration ratios, though, it is implausible that this package meets
 2 those consumer expectations.

3 **ANSWER:** KIHNE lacks sufficient information to admit or deny the allegations in
 4 Paragraph 83, and therefore denies the same.

5

6 84. ***COST PLUS/WORLD MARKET.*** World Market sells both its own private-label
 7 coffee products and coffee products offered by third parties, including coffee products falsely
 8 identified as Kona coffee. World Market falsely designates the geographic origin of its “Kona”
 9 coffee products with the prominent placement of KONA on the front of the packaging. For
 10 example, World Market sells its own private-label coffee product labeled “Hawaiian Kona Blend”
 11 in packaging intended to mislead the consumer into believing the that the product contains a
 12 significant amount of Kona coffee beans, when the product actually contains little to no Kona
 13 coffee. The deceptive packaging features hibiscus flowers and the prominent placement of
 14 geographic terms “Hawaiian” and “Kona” in the center of the package label. The deceptive product
 15 names and package designs are all intended to trade off the reputation and goodwill of the Kona
 16 name. They deliberately mislead the consumer into believing that World Market coffee products
 17 contain significant amounts of premium Kona coffee beans in order to justify the high price World
 18 Market charges for what is actually ordinary commodity coffee.

19 **ANSWER:** KIHNE lacks sufficient information to admit or deny the allegations in
 20 Paragraph 84, and therefore denies the same.

21

22 85. Below is a sample image of the deceptive packaging used by World Market for its
 23 private-label “Kona” coffee product.

24

25

26

27



Figure WM-1

ANSWER: KIHNE lacks sufficient information to admit or deny the allegations in Paragraph 85, and therefore denies the same.

86. In addition, World Market sells a variety of deceptive coffee products from Hawaiian Isles, such as those shown above in paragraph 73, all of which mislead the consumer into believing that the products contain a significant amount of Kona coffee beans when they actually contain little or no Kona.

ANSWER: KIHNE lacks sufficient information to admit or deny the allegations in Paragraph 86, and therefore denies the same.

87. While consumers would reasonably believe that the coffee in package WM-1 predominantly consisted of Kona beans, the lab tests tell a different story. On the below scatter plot showing the strontium-to-zinc ratio and the barium-to-nickel ratio, these accused products

1 (marked by red diamonds) are well outside the range of authentic Kona. In other words, World
 2 Market's designation of Kona as the origin of the coffee in these products is false.

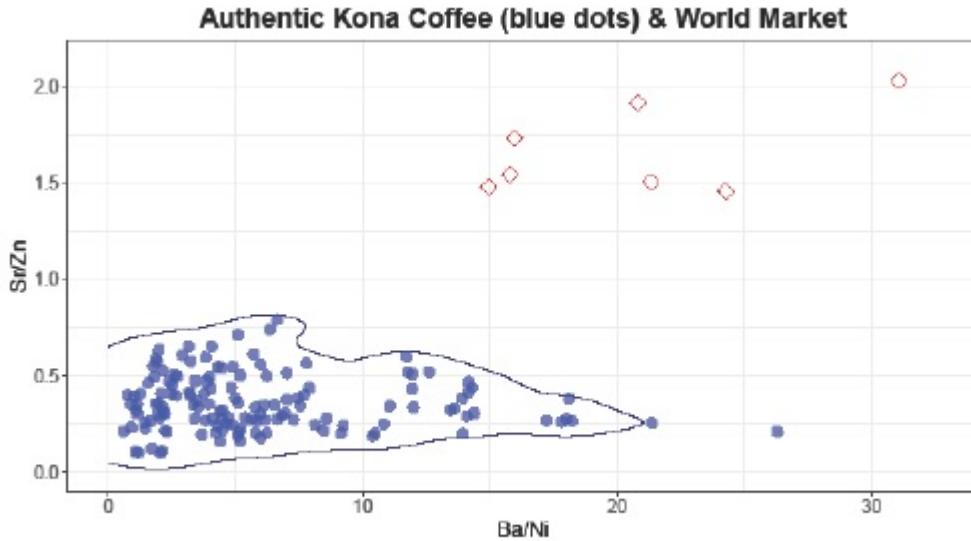


Figure WM-A

12 **ANSWER:** KIHNE lacks sufficient information to admit or deny the allegations in
 13 Paragraph 87, and therefore denies the same.

14 88. The below scatter plot showing the cobalt-to-zinc ratio and the manganese-to-
 15 nickel ratio reinforces the same conclusion. These accused products (marked by red diamonds) are
 16 well outside the range of authentic Kona. In other words, World Market's designation of Kona as
 17 the origin of the coffee in these products is false.

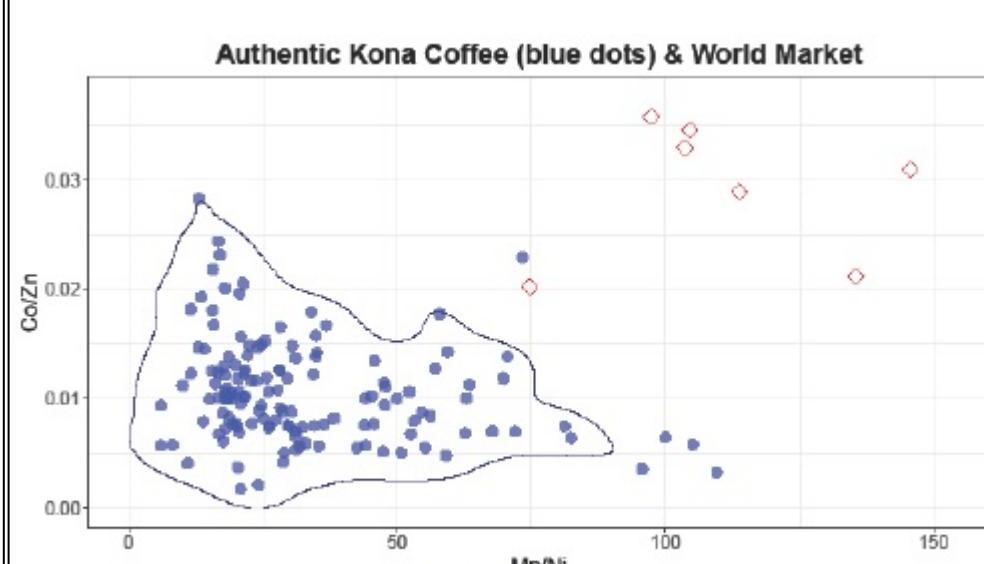


Figure WM-B

ANSWER: KIHNEK lacks sufficient information to admit or deny the allegations in Paragraph 88, and therefore denies the same.

[Plaintiffs appear to have inadvertently omitted Paragraphs 89 and 90 from their Complaint.]

91. In fact, these bags contain very little Kona coffee, if any. As an indicator of how little Kona coffee is actually in the package, note that authentic Kona has an average of no more than forty times (40x) as much manganese as nickel. In contrast, World Market samples range as high as one hundred forty times (140x) as much manganese as nickel. This evidence, and similar evidence from many other ratios, leads to the conclusion that there is very little Kona in this bag.

ANSWER: KIHNEK lacks sufficient information to admit or deny the allegations in Paragraph 91, and therefore denies the same.

92. Even a consumer understanding the coffee in the package shown in WM-1 to be a blend of Kona and other coffees (a conclusion that very few consumers would draw based on this particular packaging) would expect the package to contain a meaningful percentage of Kona beans.

1 Given the deviation in the concentration ratios, though, it is implausible that this package meets
 2 those consumer expectations.

3 **ANSWER:** KIHNE lacks sufficient information to admit or deny the allegations in
 4 Paragraph 92, and therefore denies the same.

5

6 93. *BOYER'S.* Boyer's falsely designates the geographic origin of its "Kona" coffee
 7 products with the prominent placement of KONA on the front of the packaging. For example,
 8 Boyer's sells at least two different "Kona" coffee products. One is labeled "Café Kona" and the
 9 other is labeled "Kona Blend." The Boyer's packaging is intended to mislead the consumer into
 10 believing that the product contains a significant amount of Kona coffee beans, when the product
 11 actually contains little to no Kona coffee. The deceptive product names are intended to trade off
 12 the reputation and goodwill of the Kona name. They deliberately mislead the consumer into
 13 believing that Boyer's coffee products contain significant amounts of premium Kona coffee beans
 14 in order to justify the high price Boyer's charges for what is actually ordinary commodity coffee.
 15 By using the term "Kona" to describe its products, Boyer's is falsely designating the geographic
 16 origin of the product, creating confusion around the geographic origin, and damaging the
 17 geographic designation itself. Boyer's use of the term "Kona" in the context of extolling the virtues
 18 of Colorado roasting undermines the meaning of the term, damaging its value to the farmers of
 19 authentic Kona in the Kona District.

20 **ANSWER:** KIHNE lacks sufficient information to admit or deny the allegations in
 21 Paragraph 93, and therefore denies the same.

22

23

24

25

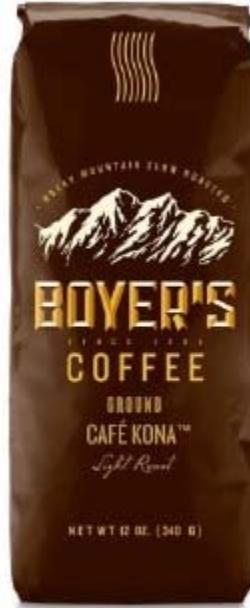
26

27

1 94. Below are representative images of Boyer's deceptive "Kona" coffee products.
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13 Figure BC-1
14
15



16 Figure BC-2²
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ANSWER: KIHNEK lacks sufficient information to admit or deny the allegations in Paragraph 94, and therefore denies the same.

² Boyer's uses several variations of its packaging, but the differences are immaterial. Plaintiffs have archive photographs of each package actually tested.

1 95. While the packages say Kona, the lab tests tell a different story. On the below
2 scatter plot showing the strontium-to-zinc ratio and the barium-to-nickel ratio, these accused
3 products (marked by red diamonds) are well outside the range of authentic Kona. In other words,
4 Boyer's designation of Kona as the origin of the coffee in these products is false.

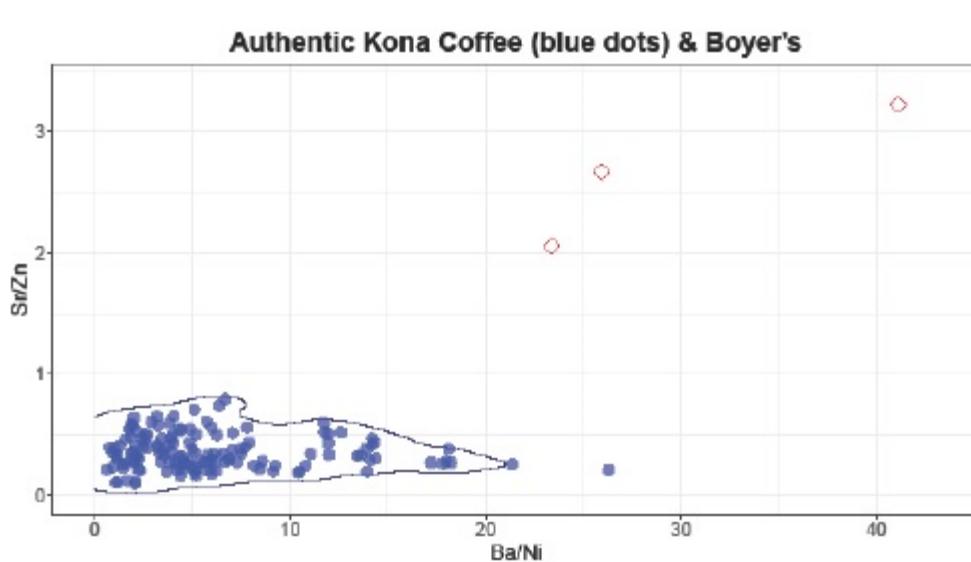


Figure BC-A

ANSWER: KIHNE lacks sufficient information to admit or deny the allegations in Paragraph 95, and therefore denies the same.

96. The below scatter plot showing the cobalt-to-zinc ratio and the manganese-to-nickel ratio reinforces the same conclusion. These accused products (marked by red diamonds) are well outside the range of authentic Kona. In other words, Boyer's designation of Kona as the origin of the coffee in these products is false.

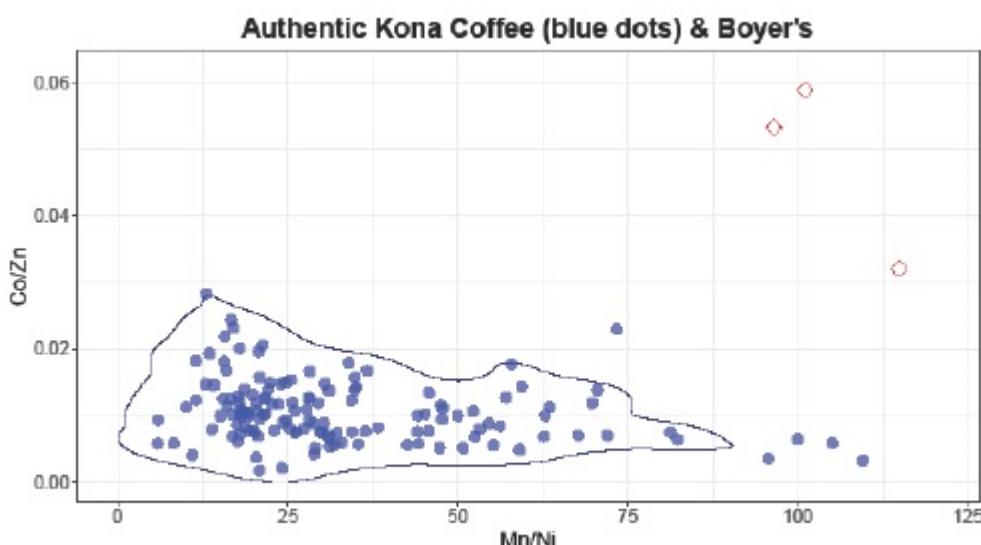


Figure BC-B

ANSWER: KIHNE lacks sufficient information to admit or deny the allegations in Paragraph 96, and therefore denies the same.

In fact, these bags contain very little Kona coffee, if any. As an indicator of how little Kona coffee is actually in the package, note that authentic Kona has an average of no more than forty times (40x) as much manganese as nickel. In contrast, Boyer's samples range as high as one hundred ten times (110x) as much manganese as nickel. This evidence, and similar evidence from many other ratios, leads to the conclusion that there is very little Kona in this bag.

ANSWER: KIHNE lacks sufficient information to admit or deny the allegations in Paragraph 97, and therefore denies the same.

Even a consumer understanding the coffee in the packages shown in BC-1 and BC-2 to be a blend of Kona and other coffees (a conclusion that very few consumers would draw based on this particular packaging) would expect the package to contain a meaningful percentage of Kona beans. Given the deviation in the concentration ratios, though, it is implausible that this package meets those consumer expectations.

1 **ANSWER:** KIHNEKE lacks sufficient information to admit or deny the allegations in
 2 Paragraph 98, and therefore denies the same.
 3

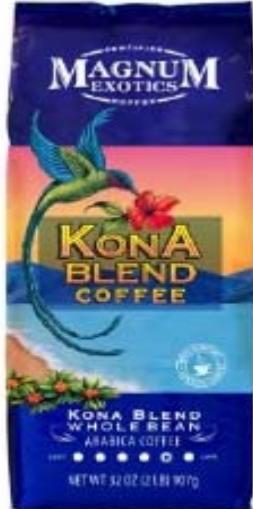
4 99. *L&K COFFEE CO. LLC (MAGNUM EXOTICS)*. L&K falsely designates the
 5 geographic origin of its “Kona” coffee products with the prominent placement of KONA on the
 6 front of the packaging. With its marketing and packaging, L&K uses deceptive taglines and
 7 slogans such as “Certified,” “Kona High Mountain Coffee” and “100% High MT. Arabica
 8 Coffee.” On its online store, L&K describes its “Kona” coffee product as “Grown high in the
 9 mountains of Hawaii, this blended coffee has the perfect balance of light taste, full body and
 10 moderate acidity.” The deceptive marketing is designed to mislead consumers into believing that
 11 L&K’s Magnum Exotics “Kona” products contain coffee from the Kona District, when the coffee
 12 products actually do not contain a significant amount of Kona coffee, if any. L&K also designs its
 13 Magnum Exotics product packaging with imagery and text intended to mislead the consumer into
 14 believing that the coffee product contains coffee beans predominantly, if not exclusively, grown
 15 in Hawaii, and specifically in the Kona region. The deceptive imagery utilized by L&K includes
 16 illustrations of beaches, humming birds, hibiscus flowers, toucan birds, and tropical islands. The
 17 deceptive marketing, product names, and package designs are all intended to trade off the
 18 reputation and goodwill of the Kona name. They deliberately mislead the consumer into believing
 19 that L&K’s Magnum Exotics coffee products contain significant amounts of premium Kona coffee
 20 beans in order to justify the high price L&K charges for what is actually ordinary commodity
 21 coffee.

22 **ANSWER:** L&K’s online website and its packaging speaks for itself. L&K’s Kona blends
 23 were marketed and sold as blends in states other than Hawaii. L&K’s Kona Blends contained a
 24 small amount of Kona beans. L&K denies that consumers were “tricked” into buying a \$7 to \$8
 25 dollar pound of Kona Blend instead of buying a \$35 to \$50 dollar pound of plaintiffs’ coffee. No
 26 consumer would reasonably believe that they were purchasing \$35 to \$50 dollar coffee for \$7 or
 27 \$8 dollars. KIHNEKE denies that L&K’s coffee products are deceptively labeled. L&K does not

1 sell any of the products described in this complaint and has not sold any since 2019. KIHNE
2 denies all remaining allegations in paragraph 99.

3

4 100. Below is a representative image of L&K's deceptive "Kona" coffee products.



13 **Figure ME-1**
14

15 **ANSWER:** KIHNE admits that this package was used by L&K prior to March 2019.
16 KIHNE denies that L&K's packaging is deceptive and further denies any remaining allegation
17 in paragraph 100.
18
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101. While consumers would reasonably believe that the coffee contained in the package
 2 shown in Figure ME-1 originated from Kona, the lab tests tell a different story. On the below
 3 scatter plot showing the strontium-to-zinc ratio and the barium-to-nickel ratio, these accused
 4 products (marked by red diamonds) are well outside the range of authentic Kona. In other words,
 5 L&K's designation of Kona as the origin of the coffee in these products is false.

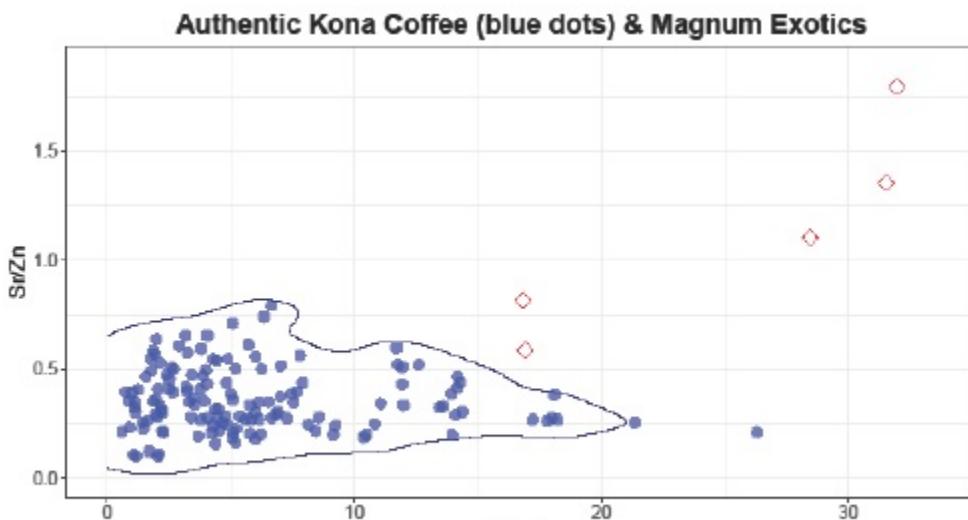


Figure ME-A

ANSWER: KIHNEKE denies that consumers were “tricked” into buying a \$7 to \$8 dollar pound of Kona Blend instead of buying a \$35 to \$50 dollar pound of plaintiffs’ coffee. No consumer would reasonably believe that they were purchasing \$35 to \$50 dollar coffee for \$7 or \$8 dollars. KIHNEKE notes that the scatter plots appear distorted. KIHNEKE denies that L&K’s coffee products are deceptively labeled. L&K does not sell any of the products described in this complaint and has not sold any since 2019. KIHNEKE lacks sufficient information to admit or deny the other allegations in Paragraph 101, and therefore denies the same.

102. The below scatter plot showing the cobalt-to-zinc ratio and the manganese-to-nickel ratio reinforces the same conclusion. These accused products (marked by red diamonds) are well outside the range of authentic Kona. In other words, L&K's designation of Kona as the origin of the coffee in these products is false.

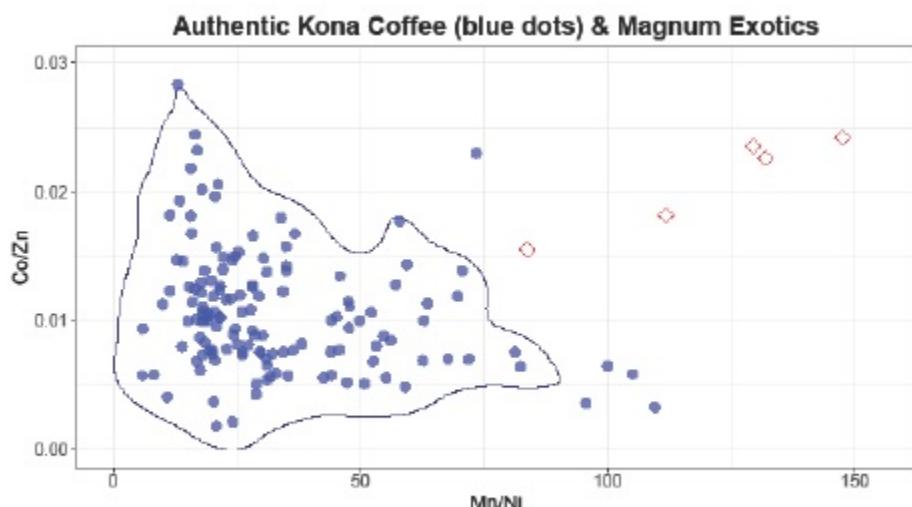


Figure ME-B

ANSWER: KIHNEK denies that consumers were “tricked” into buying a \$7 to \$8 dollar pound of Kona Blend instead of buying a \$35 to \$50 dollar pound of plaintiffs’ coffee. No consumer would reasonably believe that they were purchasing \$35 to \$50 dollar coffee for \$7 or \$8 dollars. KIHNEK notes that the scatter plots are appear distorted. KIHNEK denies that L&K’s coffee products are deceptively labeled. L&K does not sell any of the products described in this complaint and has not sold any since 2019. KIHNEK lacks sufficient information to admit or deny the other allegations in Paragraph 102, and therefore denies the same.

103. In fact, these bags contain very little Kona coffee, if any. As an indicator, note that authentic Kona has an average of less than forty times (40x) as much manganese as nickel. In contrast, Magnum Exotics samples range as high as one hundred forty-five times (145x) as much manganese as nickel. This evidence, and similar evidence from many other ratios, leads to the conclusion that there is very little Kona in L&K’s Magnum Exotics coffee products.

1 **ANSWER:** KIHNEK denies that consumers were “tricked” into buying a \$7 to \$8 dollar
 2 pound of Kona Blend instead of buying a \$35 to \$50 dollar pound of plaintiffs’ coffee. No
 3 consumer would reasonably believe that they were purchasing \$35 to \$50 dollar coffee for \$7 or
 4 \$8 dollars. KIHNEK notes that the scatter plots are appear distorted. KIHNEK denies that L&K’s
 5 coffee products are deceptively labeled. L&K does not sell any of the products described in this
 6 complaint and has not sold any since 2019. KIHNEK lacks sufficient information to admit or deny
 7 the other allegations in Paragraph 103, and therefore denies the same.

8

9 104. Even a consumer understanding the coffee in the package shown in ME-1 to be a
 10 blend of Kona and other coffees (a conclusion that very few consumers would draw based on this
 11 particular packaging) would expect the package to contain a meaningful percentage of Kona beans.
 12 Given the deviation in the concentration ratios, though, it is implausible that this package meets
 13 those consumer expectations.

14

ANSWER: KIHNEK denies that consumers were “tricked” into buying a \$7 to \$8 dollar
 15 pound of Kona Blend instead of buying a \$35 to \$50 dollar pound of plaintiffs’ coffee. No
 16 consumer would reasonably believe that they were purchasing \$35 to \$50 dollar coffee for \$7 or
 17 \$8 dollars. KIHNEK denies that L&K’s coffee products are deceptively labeled. L&K does not
 18 sell any of the products described in this complaint and has not sold any since 2019. KIHNEK
 19 lacks sufficient information to admit or deny the other allegations in Paragraph 104, and therefore
 20 denies the same.

21

22 105. *COPPER MOON COFFEE.* Copper Moon falsely designates the geographic origin
 23 of its “Kona” coffee products with the prominent placement of KONA on the front of the
 24 packaging. In addition, Copper Moon uses deceptive names for its products intended to mislead
 25 consumers into believing that the coffee products contain a significant amount of Kona coffee. The
 26 deceptive product names include “Kona 100% Arabica Premium Blend,” and “Kona Premium
 27 Blend.” On its website, Copper Moon identifies the sources of the beans used in their coffee

1 products, which include Nicaragua, Rwanda, Peru, and Ethiopia. Noticeably absent is any
 2 description for the source of the Kona coffee that they purportedly use in their Kona coffee
 3 products. Copper Moon also designs its product packaging with imagery and text intended to
 4 mislead the consumer into believing that the product labeled “Kona” contains coffee beans
 5 predominantly, if not exclusively, grown in the Kona District. For example, Copper Moon’s
 6 “Kona” products prominently feature a postage stamp of the iconic plumeria flower, used in
 7 Hawaiian lei, to mislead consumers into believing that the origin of the coffee product is Kona,
 8 Hawaii. The deceptive marketing, product names, and package designs are all intended to trade
 9 off the reputation and goodwill of the Kona name. They deliberately mislead the consumer into
 10 believing that Copper Moon coffee products contain significant amounts of premium Kona coffee
 11 beans in order to justify the high price Copper Moon charges for ordinary commodity coffee beans.

12 **ANSWER:** KIHNEK lacks sufficient information to admit or deny the allegations in
 13 Paragraph 105, and therefore denies the same.

14

15 106. Below are representative images of Copper Moon’s deceptive “Kona” coffee
 16 products.



27 **Figure CM-1**

1 **ANSWER:** KIHNEK lacks sufficient information to admit or deny the allegations in
 2 Paragraph 106, and therefore denies the same.

3
 4 107. Copper Moon follows the term “Kona” with the percentage “100%,” which alone
 5 reinforces the impression that the coffee is unadulterated Kona. The misleading placement of
 6 “100%” near the term “Kona” is a deceptive practice employed by Copper Moon and other
 7 defendants to mislead consumers into believing that the product contains 100% Kona coffee.

8 **ANSWER:** KIHNEK lacks sufficient information to admit or deny the allegations in
 9 Paragraph 107, and therefore denies the same.

10
 11 108. Copper Moon also labels its product as “100% Arabica,” which is a deception that
 12 is common across many defendants. Like over 75% of the world’s coffee production, Kona is a
 13 kind of Arabica coffee bean. The term “Kona” followed by the phrase “100% Arabica” is therefore
 14 consistent with the bag containing pure Kona coffee. And it is not consistent with the bag
 15 containing non-Kona Arabica coffees. Imagine, for example, that the package had said “Kona —
 16 100% Coffee.” That marketing line would be just as true for real Kona, and just as meaningless,
 17 as the “100% Arabica” line. And that language would never be interpreted as allowing the
 18 substitution of commodity coffee, since it “discloses” that it contains 100% coffee. Similarly,
 19 labeling a product with the phrase “100% Arabica” does not allow a defendant to substitute cheaper
 20 Arabica beans for Kona beans, while misleading consumers to believe that the product contains
 21 100% Kona coffee.

22 **ANSWER:** KIHNEK lacks sufficient information to admit or deny the allegations in
 23 Paragraph 108, and therefore denies the same.

24
 25 109. But while consumers would reasonably believe that the package in Figures CM-1
 26 contains 100% Kona coffee, the lab tests tell a different story. On the below scatter plot showing
 27 the strontium-to-zinc ratio and the barium-to-nickel ratio, these accused products (marked by red

1 diamonds) are well outside the range of authentic Kona. In other words, Copper Moon's
 2 designation of Kona as the origin of the coffee in its products is false.

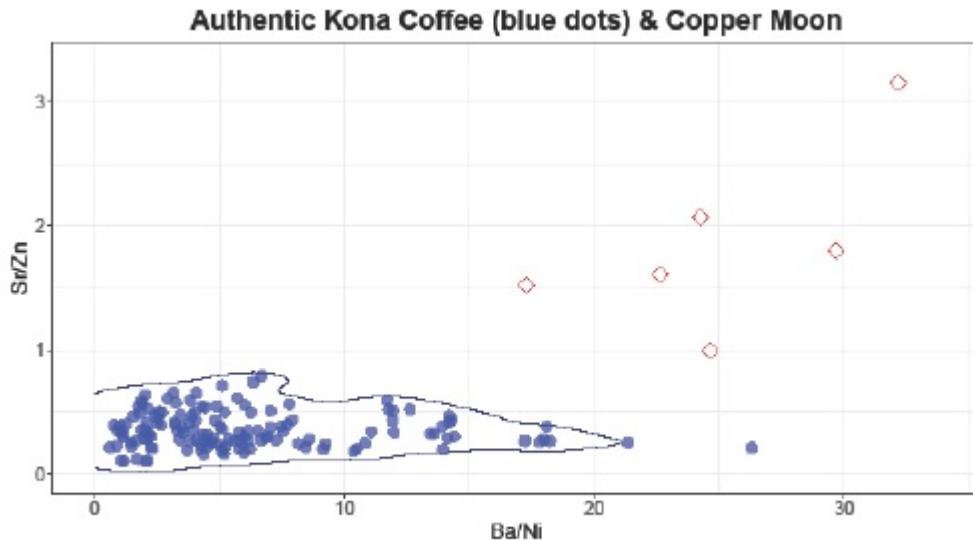


Figure CM-A

17

18 **ANSWER:** KIHNE lacks sufficient information to admit or deny the allegations in
 19 Paragraph 109, and therefore denies the same.

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110. The below scatter plot showing the cobalt-to-zinc ratio and the manganese-to-nickel ratio reinforces the same conclusion. These accused products (marked by red diamonds) are well outside the range of authentic Kona. In other words, Copper Moon's designation of Kona as the origin of the coffee in its products is false.

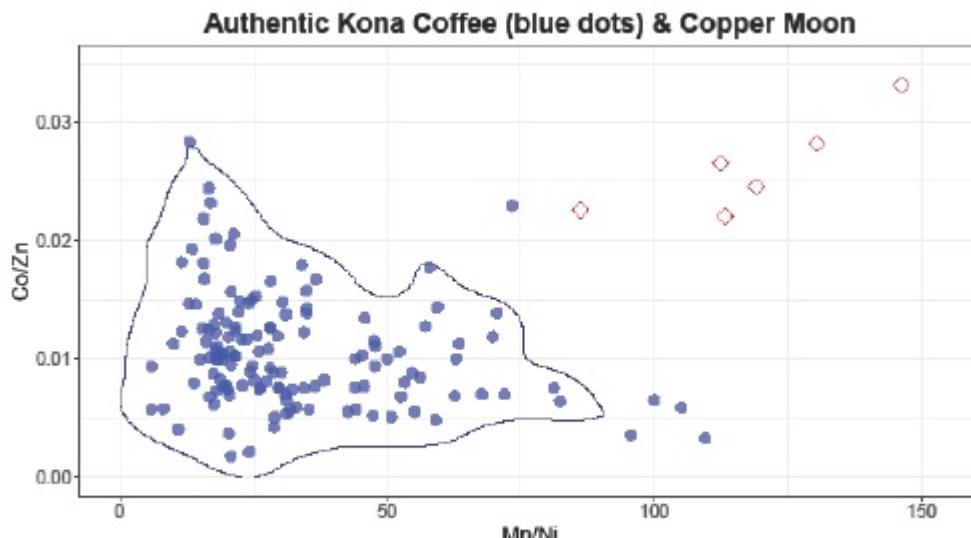


Figure CM-B

ANSWER: KIHNEK lacks sufficient information to admit or deny the allegations in Paragraph 110, and therefore denies the same.

111. In fact, these bags contain very little Kona coffee, if any. As an indicator, note that authentic Kona has an average of less than eight times (8x) as much barium as nickel. In contrast, a Cooper Moon sample has over thirty times (30x) as much barium as nickel. This evidence, and similar evidence from many other ratios, leads to the conclusion that there is very little Kona in this bag.

ANSWER: KIHNEK lacks sufficient information to admit or deny the allegations in Paragraph 111, and therefore denies the same.

112. Even a consumer understanding the coffee in the package shown in CB-1 to be a blend of Kona and other coffees (a conclusion that very few consumers would draw based on this particular packaging) would expect the package to contain a meaningful percentage of Kona beans.

1 Given the deviation in the concentration ratios, though, it is implausible that this package meets
 2 those consumer expectations.

3 **ANSWER:** KIHNEKE lacks sufficient information to admit or deny the allegations in
 4 Paragraph 112, and therefore denies the same.

5

6 113. *CAMERON'S.* Cameron's falsely designates the geographic origin of its "Kona"
 7 coffee products with the prominent placement of KONA on its packaging. Cameron's also
 8 describes its "Kona" coffee products as "premium," when the coffee beans in the product are not
 9 "premium" beans from Kona but are instead merely commodity coffee beans from other regions
 10 of the world. To further deceive consumers as to the origin of the coffee beans in their "Kona"
 11 coffee products, Cameron's packaging features a tropical flower to further the association between
 12 Hawaii and the Cameron's product in the mind of the consumer. Cameron's false designation of
 13 Kona as the origin of the coffee is intended to trade off the reputation and goodwill of the Kona
 14 name. They deliberately mislead the consumer into believing that Cameron's coffee products
 15 contain premium Kona coffee beans in order to justify the high price Cameron's charges for
 16 ordinary commodity coffee beans.

17 **ANSWER:** KIHNEKE lacks sufficient information to admit or deny the allegations in
 18 Paragraph 113, and therefore denies the same.

19

20 114. Below are representative images of the deceptive packaging used by Cameron's for
 21 its "Kona" coffee products.

22

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27



Figure CC-1



Figure CC-2

ANSWER: KIHNEK lacks sufficient information to admit or deny the allegations in Paragraph 114, and therefore denies the same.

115. But while consumers could reasonably believe that the packages in Figures CC-1 and CC-2 contain nothing but Kona coffee, the lab tests tell a different story. On the below scatter plot showing the strontium-to-zinc ratio and the barium-to-nickel ratio, these accused products (marked by red diamonds) are well outside the range of authentic Kona. In other words, Cameron's designation of Kona as the origin of the coffee in its products is false.

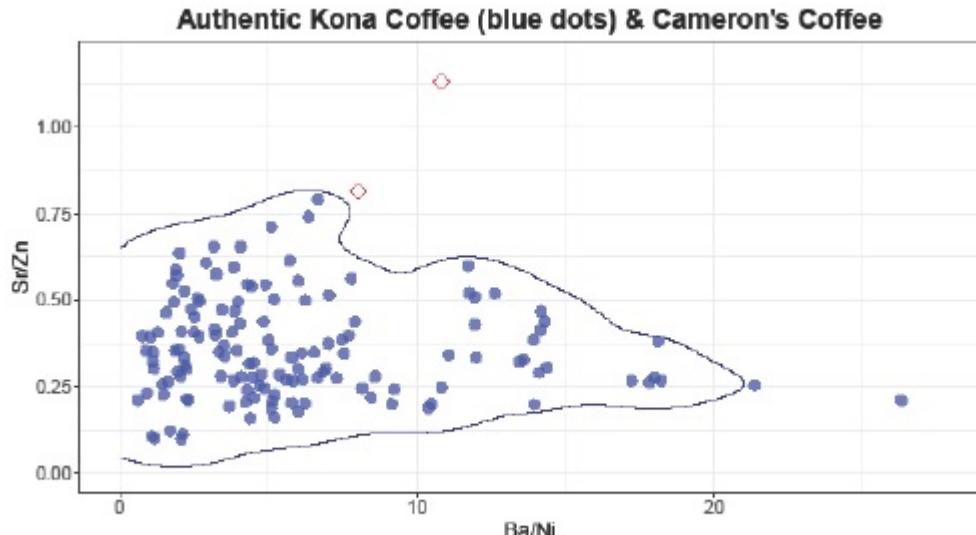


Figure CC-A

ANSWER: KIHNE lacks sufficient information to admit or deny the allegations in Paragraph 115, and therefore denies the same.

116. The below scatter plot showing the cobalt-to-zinc ratio and the manganese-to-nickel ratio reinforces the same conclusion. These accused products (marked by red diamonds) are well outside the range of authentic Kona. In other words, Cameron's designation of Kona as the origin of the coffee in its products is false.

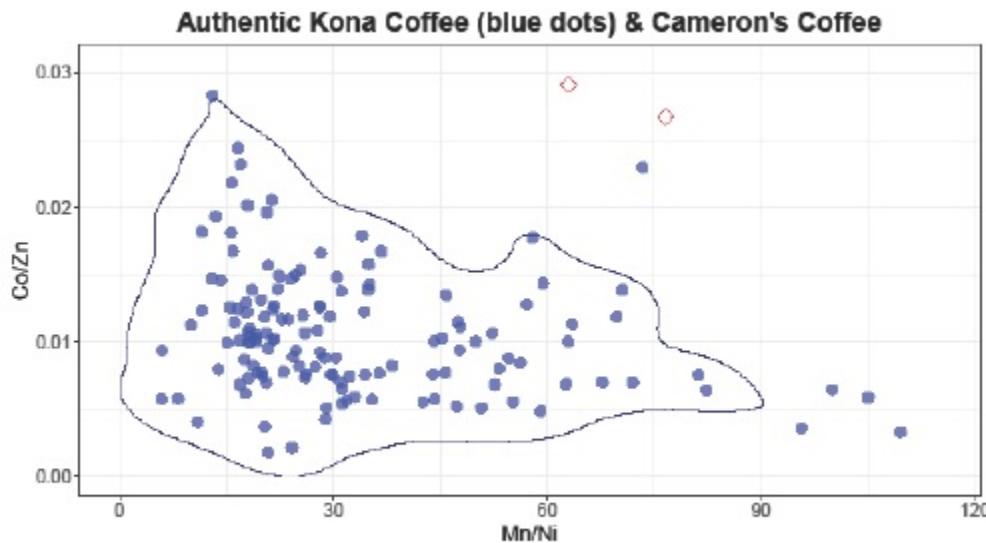


Figure CC-B

ANSWER: KIHNEK lacks sufficient information to admit or deny the allegations in Paragraph 116, and therefore denies the same.

117. Even a consumer understanding the coffee in the package shown in CC-1 to be a blend of Kona and other coffees (a conclusion that very few consumers would draw based on this particular packaging) would expect the package to contain a meaningful percentage of Kona beans. Given the deviation in the concentration ratios, though, it is implausible that this package meets those consumer expectations.

ANSWER: KIHNEK lacks sufficient information to admit or deny the allegations in Paragraph 117, and therefore denies the same.

118. *THE KROGER CO.* With its private-label “Kivu,” Kroger falsely designates the geographic origin of its “Kona” coffee products with the prominent placement of KONA on the label of both its pre-packaged products and its self-serve dispensers. In addition, Kroger sells coffee products from Hawaiian Gold, which also falsely designates Kona as the geographic origin. Kroger designs its product packaging with imagery intended to mislead the consumer into

1 believing that the coffee product contains coffee beans grown in the Kona District. The deceptive
 2 packaging prominently features the word KONA with images of hibiscus flowers and tropical
 3 islands. The self-serve dispensary for the Kivu coffee describes the product as “premium coffee ...
 4 grown on the steep slopes of the Kona region of Hawaii.” These statements are intended to mislead
 5 consumers into believing that the Kona coffee sold under the Kivu label is cultivated in the Kona
 6 region, when in fact the product is mostly commodity coffee beans grown in other parts of the
 7 world. The deceptive package design featuring the false designation of Kona as the origin of the
 8 coffee is intended to trade off the reputation and goodwill of the Kona name. They deliberately
 9 mislead the consumer into believing that Kroger’s coffee products contain nothing but premium
 10 Kona coffee beans in order to justify the high price Kroger charges for ordinary commodity coffee
 11 beans.

12 **ANSWER:** KIHNE lacks sufficient information to admit or deny the allegations in
 13 Paragraph 118, and therefore denies the same.

14

15 119. Below is a sample image of the deceptive packaging used by Kroger for its private-
 16 label “Kona” coffee product at its self-serve dispensers found in its retail stores.

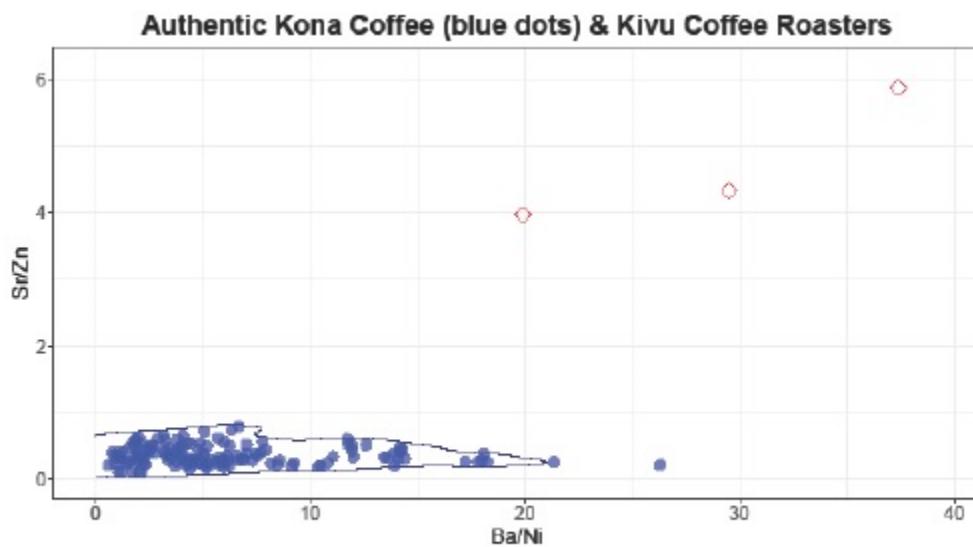
17



27 **Figure Kroger-1**

1 **ANSWER:** KIHNEK lacks sufficient information to admit or deny the allegations in
 2 Paragraph 119, and therefore denies the same.

3
 4 120. But while consumers could reasonably believe that the package in Figure Kroger-
 5 contains nothing but Kona coffee, the lab tests tell a different story. On the below scatter plot
 6 showing the strontium-to-zinc ratio and the barium-to-nickel ratio, these accused products (marked
 7 by red diamonds) are well outside the range of authentic Kona. In other words, Kroger's
 8 designation of Kona as the origin of the coffee in its Kivu products is false.



19 **Figure Kroger-A**

20 **ANSWER:** KIHNEK lacks sufficient information to admit or deny the allegations in
 21 Paragraph 120 and therefore denies the same.

22
 23 121. The below scatter plot showing the cobalt-to-zinc ratio and the manganese-to-
 24 nickel ratio reinforces the same conclusion. These accused Kroger Kivu products (marked by red
 25 diamonds) are well outside the range of authentic Kona. In other words, Kroger's designation of
 26 Kona as the origin of the coffee in its Kivu products is false.

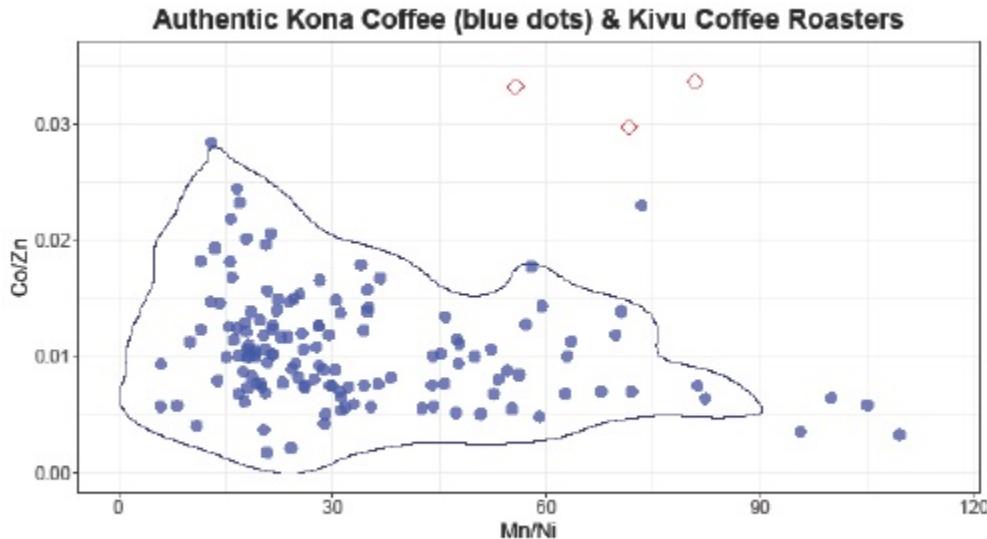


Figure Kroger-B

ANSWER: KIHNE lacks sufficient information to admit or deny the allegations in Paragraph 121, and therefore denies the same.

122. In fact, these bags contain very little Kona coffee, if any. As an indicator, note that authentic Kona has less strontium than zinc. (See Figure Kroger-A.) In contrast, Kivu samples have between four times (4x) and six times (6x) as much strontium as zinc. This evidence, and similar evidence from many other ratios, leads to the conclusion that there is very little Kona in this bag.

ANSWER: KIHNE lacks sufficient information to admit or deny the allegations in Paragraph 122, and therefore denies the same.

123. Even a consumer understanding the coffee in the package shown in Kroger-1 to be a blend of Kona and other coffees (a conclusion that very few consumers would draw based on this particular packaging) would expect the package to contain a meaningful percentage of Kona beans. Given the deviation in the concentration ratios, though, it is implausible that this package meets those consumer expectations.

1 **ANSWER:** KIHNEKE lacks sufficient information to admit or deny the allegations in
 2 Paragraph 123, and therefore denies the same.

3
 4 124. *AMAZON.COM.* Through its online store at www.amazon.com, Amazon sells a
 5 variety of deceptive coffee products, including but not limited to the following: MCC, Hawaiian
 6 Isles, Hawaii Gold, Mulvadi, Cameron's, Copper Moon, Hazz, and Magnum Exotics. Each of
 7 these brands offers products through Amazon that falsely designate KONA as the origin of the
 8 coffee beans. And Amazon wrongfully profits on each sale.

9 **ANSWER:** KIHNEKE admits that L&K has sold certain coffee products through
 10 Amazon.com. KIHNEKE denies that L&K's coffee products are deceptive, and further denies that
 11 Amazon wrongfully profits on the sale of L&K coffee products. KIHNEKE denies that consumers
 12 were "tricked" into buying a \$7 to \$8 dollar pound of Magnum's Kona Blend instead of buying a
 13 \$35 to \$50 dollar pound of plaintiffs' coffee. No consumer would reasonably believe that they
 14 were purchasing \$35 to \$50 dollar coffee for \$7 or \$8 dollars. KIHNEKE denies L&K's coffee
 15 products are deceptively labeled. L&K does not sell any of the products described in this
 16 complaint and has not sold any since 2019. KIHNEKE lacks sufficient information to admit or deny
 17 the remaining allegations in Paragraph 124, and therefore denies the same.

18
 19 125. *WALMART.* Walmart sells a variety of deceptive coffee products, including but not
 20 limited to the following: MCC, Copper Moon, Cameron's, Hawaiian Gold, Boyer's, Hawaiian
 21 Isles, and Mulvadi. Walmart wrongfully profits on each sale.

22 **ANSWER:** KIHNEKE lacks sufficient information to admit or deny the allegations in
 23 Paragraph 125, and therefore denies the same.

24
 25 126. *COSTCO.* Costco sells a variety of deceptive coffee products, including but not
 26 limited to Magnum Exotics. Costco wrongfully profits on each sale.

1 **ANSWER:** KIHNEK admits that L&K has sold certain coffee products through Costco.
 2 KIHNEK denies that L&K's coffee products are deceptive, and further denies that Costco
 3 wrongfully profits on the sale of L&K coffee products. KIHNEK denies that consumers were
 4 "tricked" into buying a \$7 to \$8 dollar pound of Magnum's Kona Blend instead of buying a \$35
 5 to \$50 dollar pound of plaintiffs' coffee. No consumer would reasonably believe that they were
 6 purchasing \$35 to \$50 dollar coffee for \$7 or \$8 dollars. KIHNEK denies L&K's coffee products
 7 are deceptively labeled. L&K does not sell any of the products described in this complaint and
 8 has not sold any since 2019. KIHNEK lacks sufficient information to admit or deny the remaining
 9 allegations in Paragraph 126, and therefore denies the same.

10
 11 127. *BED BATH & BEYOND.* Bed Bath sells a variety of deceptive coffee products,
 12 including but not limited to Copper Moon. Bed Bath wrongfully profits on each sale.

13 **ANSWER:** KIHNEK lacks sufficient information to admit or deny the allegations in
 14 Paragraph 127, and therefore denies the same.

15
 16 128. *ALBERTSONS & SAFEWAY.* Albertsons and Safeway generally offer for sale the
 17 same coffee products featuring Kona on the label. They both sell a variety of deceptive coffee
 18 products, including but not limited to Hawaiian Isles. Safeway also sells deceptive coffee products
 19 from Cameron's. Albertsons and Safeway wrongfully profit on each sale.

20 **ANSWER:** KIHNEK lacks sufficient information to admit or deny the allegations in
 21 Paragraph 128, and therefore denies the same.

22
 23 129. *MNS LTD.* ("ABC"). ABC sells a variety of deceptive coffee products, including
 24 but not limited to the following: Mulvadi, MCC and Hawaiian Isles. ABC wrongfully profits on
 25 each sale.

26 **ANSWER:** KIHNEK lacks sufficient information to admit or deny the allegations in
 27 Paragraph 129, and therefore denies the same.

1 130. *TJX*. Through its retail stores branded T.J. Maxx, TJX sells a variety of deceptive
 2 coffee products, including but not limited to the following: Hawaiian Gold, Magnum Exotics, and
 3 Kona Roasting Co. TJX wrongfully profits on each sale.

4 **ANSWER:** KIHNEK admits that L&K has sold certain coffee products through TJX.
 5 KIHNEK denies that L&K's coffee products are deceptive, and further denies that TJX wrongfully
 6 profits on the sale of L&K coffee products. KIHNEK denies that consumers were "tricked" into
 7 buying a \$7 to \$8 dollar pound of Magnum's Kona Blend instead of buying a \$35 to \$50 dollar
 8 pound of plaintiffs' coffee. No consumer would reasonably believe that they were purchasing \$35
 9 to \$50 dollar coffee for \$7 or \$8 dollars. KIHNEK denies L&K's coffee products are deceptively
 10 labeled. L&K does not sell any of the products described in this complaint and has not sold any
 11 since 2019. KIHNEK lacks sufficient information to admit or deny the remaining allegations in
 12 Paragraph 130, and therefore denies the same.

13
 14 131. *MARSHALLS OF MA*. Through its retail stores branded Marshalls, Marshalls of
 15 MA sells a variety of deceptive coffee products, including but not limited to the following:
 16 Hawaiian Gold, Magnum Exotics, and Kona Roasting Co. Marshalls of MA wrongfully profits on
 17 each sale.

18 **ANSWER:** KIHNEK admits that L&K has sold certain coffee products through Marshalls.
 19 KIHNEK denies that L&K's coffee products are deceptive, and further denies that Marshalls
 20 wrongfully profits on the sale of L&K coffee products. KIHNEK denies that consumers were
 21 "tricked" into buying a \$7 to \$8 dollar pound of Magnum's Kona Blend instead of buying a \$35
 22 to \$50 dollar pound of plaintiffs' coffee. No consumer would reasonably believe that they were
 23 purchasing \$35 to \$50 dollar coffee for \$7 or \$8 dollars. KIHNEK denies L&K's coffee products
 24 are deceptively labeled. L&K does not sell any of the products described in this complaint and
 25 has not sold any since 2019. KIHNEK lacks sufficient information to admit or deny the remaining
 26 allegations in Paragraph 131, and therefore denies the same.

132. *SPROUTS*. Sprouts sells a variety of deceptive coffee products, including but not limited to Cameron's. Sprouts wrongfully profits on each sale.

ANSWER: KIHNE lacks sufficient information to admit or deny the allegations in Paragraph 132, and therefore denies the same.

CAUSE OF ACTION
FALSE DESIGNATION OF ORIGIN, FALSE ADVERTISING, AND
UNFAIR COMPETITION UNDER LANHAM ACT §43(A)
(15 U.S.C. §1125(A))

133. Plaintiffs hereby incorporate by reference the allegations of the foregoing paragraphs as though fully set forth herein.

ANSWER: KIHNE incorporates by reference each of the foregoing paragraphs, including the admissions and denials therein, as though fully set forth herein.

134. Section 43(a) of the Lanham Act provides in pertinent part: "Any person, who, on or in connection with any goods or services, or any container of goods, uses in commerce any word, term, name, symbol, or device, or any combination thereof, or any false designation of origin, false or misleading description of fact, or false or misleading representation of fact, which ... (A) is likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association of such person with another person, or as to the origin, sponsorship, or approval of his or her goods, services, or commercial activities by another person, or (B) in commercial advertising or promotion, misrepresents the nature, characteristics, qualities, or geographic origin of his or her or another person's goods, services, or commercial activities, shall be liable in a civil action by any person who believes that he or she is or is likely to be damaged by such act." 15 U.S.C. §1125(a)(1)(A)&(B).

ANSWER: The allegations in Paragraph 134 are legal conclusions not requiring a response. To the extent that a response is required, KIHNEK denies these allegations. L&K does not sell any of the products described in this complaint and has not sold any since 2019.

1 135. Plaintiffs and the Class, comprised entirely of farmers of authentic Kona coffee,
 2 have a reasonable and genuine interest to be protected against the Defendants' false designation of
 3 origin and sale of coffee products fraudulently labeled as Kona.

4 **ANSWER:** KIHNEKE denies the allegations in Paragraph 135.

5

6 136. In violation of Section 43(a) of the Lanham Act, 15 U.S.C. §1125(a)(1), Defendants
 7 have used, continue to use and/or profit from the use of the Kona name as a false designation of
 8 origin.

9 **ANSWER:** KIHNEKE denies the allegations in Paragraph 136 to the extent they relate to
 10 L&K coffee products. L&K does not sell any of the products described in this complaint and has
 11 not sold any since 2019. KIHNEKE lacks sufficient information to admit or deny the allegations in
 12 Paragraph 136 to the extent they relate to other accused coffee products, and therefore denies the
 13 same.

14

15 137. In violation of Section 43(a) of the Lanham Act, 15 U.S.C. §1125(a)(1)(A),
 16 Defendants' false designation of origin for the coffee products they manufacture, distribute and/or
 17 sell in commerce is likely to cause consumer confusion and mistaken purchases, and is likely to
 18 deceive consumers as to the origin of the coffee products manufactured, distributed and/or sold by
 19 Defendants.

20 **ANSWER:** KIHNEKE denies the allegations in Paragraph 137 to the extent they relate to
 21 L&K coffee products. KIHNEKE denies that L&K's coffee products are deceptive. KIHNEKE
 22 denies that consumers were "tricked" into buying a \$7 to \$8 dollar pound of Magnum's Kona
 23 Blend instead of buying a \$35 to \$50 dollar pound of plaintiffs' coffee. No consumer would
 24 reasonably believe that they were purchasing \$35 to \$50 dollar coffee for \$7 or \$8 dollars.
 25 KIHNEKE denies L&K's coffee products are deceptively labeled. L&K does not sell any of the
 26 products described in this complaint and has not sold any since 2019. KIHNEKE lacks sufficient
 27

1 information to admit or deny the allegations in Paragraph 137 to the extent they relate to other
 2 accused coffee products, and therefore denies the same.

3

4 138. In violation of Section 43(a) of the Lanham Act, 15 U.S.C. §1125(a)(1)(B),
 5 Defendants have used in commerce descriptions that falsely and/or misleadingly designate Kona
 6 as the origin of the coffee products, when most of the coffee beans contained in the coffee products
 7 were sourced from other regions of the world.

8 **ANSWER:** KIHNEK denies the allegations in Paragraph 138 to the extent they relate to
 9 L&K coffee products. KIHNEK denies that L&K's coffee products are deceptive. KIHNEK
 10 denies that consumers were "tricked" into buying a \$7 to \$8 dollar pound of Magnum's Kona
 11 Blend instead of buying a \$35 to \$50 dollar pound of plaintiffs' coffee. No consumer would
 12 reasonably believe that they were purchasing \$35 to \$50 dollar coffee for \$7 or \$8 dollars.
 13 KIHNEK denies L&K's coffee products are deceptively labeled. L&K does not sell any of the
 14 products described in this complaint and has not sold any since 2019. KIHNEK lacks sufficient
 15 information to admit or deny the remaining allegations in Paragraph 138 to the extent they relate
 16 to other accused coffee products, and therefore denies the same.

17

18 139. By marketing and selling coffee products that falsely designate Kona as the origin
 19 of coffee beans that are of inferior quality, Defendants are damaging the reputation and goodwill
 20 of the Kona name, as well as the market value of authentic Kona coffee, to the detriment of
 21 Plaintiffs and the Class.

22 **ANSWER:** KIHNEK denies the allegations in Paragraph 139 to the extent they relate to
 23 L&K coffee products. There is and never will be credible evidence that L&K or KIHNEK did
 24 anything that had an impact on Kona coffee prices, or the reputation or goodwill of the "Kona
 25 name," in which no plaintiff or class member has a legally cognizable ownership or proprietary
 26 interest. L&K does not sell any of the products described in this complaint and has not sold any
 27 since 2019. KIHNEK lacks sufficient information to admit or deny the remaining allegations in

1 Paragraph 139 to the extent they relate to other accused coffee products, and therefore denies the
 2 same.

3

4 140. Plaintiffs and the Class are comprised of farmers of authentic Kona coffee who
 5 have been and continue to be damaged by Defendants' violations of the Lanham Act, and are
 6 therefore entitled to equitable relief, including a permanent injunction, and damages in an amount
 7 to be proven at trial. As a component of damages to be awarded, Plaintiffs and the Class request a
 8 substantial award to finance a national corrective advertising campaign to help remedy the harm
 9 that Defendants have caused to the goodwill and reputation of the Kona name.

10 **ANSWER:** KIHNEKE denies the allegations in Paragraph 140 to the extent they relate to
 11 Plaintiffs' alleged damages arising out of KIHNEKE's alleged acts or omissions, or Plaintiffs'
 12 alleged entitlement to relief based on any such acts or omissions. L&K does not sell any of the
 13 products described in this complaint and has not sold any since 2019. KIHNEKE lacks sufficient
 14 information to admit or deny the other allegations in Paragraph 139, and therefore denies the same.

15

16 141. Because Defendants are sophisticated participants in the coffee industry, with
 17 designated coffee buyers and designated coffee product managers, they have full knowledge of
 18 exactly what they are buying and what they are selling. Given the egregious nature of the
 19 Defendants' false designation of Kona as the source of their commodity coffee beans, Plaintiffs
 20 and the Class seek an award of three times actual damages.

21 **ANSWER:** Whether or not Defendants are sophisticated participants in the coffee industry
 22 is a statement of subjective opinion, not a factual allegation capable of admission or denial. To the
 23 extent a response is required, KIHNEKE denies the same. KIHNEKE admits that L&K has employees
 24 whose job functions include sourcing coffee beans for its coffee products. KIHNEKE denies the
 25 remaining allegations in Paragraph 141 to the extent they pertain to L&K coffee products. L&K
 26 does not sell any of the products described in this complaint and has not sold any since 2019.

27

1 KIHNE lacks sufficient information to admit or deny the allegations in Paragraph 140 as related
2 to other defendants, and therefore denies the same.

3

4 142. Pursuant to 15 U.S.C. §1117(a), Plaintiffs and the Class are entitled to recover
5 Defendants' profits earned through the sale of various coffee products that falsely designate Kona
6 as the origin of the coffee beans.

7 **ANSWER:** KIHNE denies the allegations in Paragraph 142 to the extent they relate to
8 L&K coffee products. KIHNE lacks sufficient information to admit or deny the allegations in
9 Paragraph 142 to the extent they relate to other accused coffee products, and therefore denies the
10 same.

11

12 143. As a direct and proximate result of their wrongful conduct as alleged above,
13 Defendants have caused, and will continue to cause, immediate and irreparable injury to Plaintiffs
14 and the Class, and to their business, reputation, and goodwill, for which there is no adequate
15 remedy at law. As such, Plaintiffs and the Class are entitled to an injunction under 15 U.S.C. §1116
16 permanently restraining Defendants, both individually and collectively, from using the name
17 "Kona" in their labels, packaging, promotions, marketing, or advertising of any Kona product that
18 they roast, manufacture, package, or label.

19 **ANSWER:** KIHNE denies the allegations in Paragraph 143 to the extent they relate to
20 L&K coffee products. L&K does not sell any of the products described in this complaint and has
21 not sold any since 2019. KIHNE lacks sufficient information to otherwise admit or deny the
22 remaining allegations in Paragraph 143, and therefore denies the same.

23

24 144. Pursuant to 15 U.S.C. § 1117, Plaintiffs and the Class seek to recover the cost of
25 this action, and, because this case qualifies as exceptional, their reasonable attorneys' fees.

26 **ANSWER:** KIHNE admits that the Plaintiffs seek the relief referenced in Paragraph 144,
27 but denies Plaintiffs' entitlement thereto as against KIHNE. KIHNE otherwise lacks sufficient

1 information to admit or deny the remaining allegations in Paragraph 144, and therefore denies the
2 same.

3
4 145. Plaintiffs and the Class seek to hold Defendants jointly and severally liable for the
5 lost profits of Plaintiffs and the Class and for corrective advertising necessary to restore the
6 reputation and goodwill of the Kona name.

7 **ANSWER:** KIHNEK admits that the Plaintiffs seek the relief referenced in Paragraph 145,
8 but denies Plaintiffs' entitlement thereto as against KIHNEK. Further, KIHNEK does not have
9 joint liability with all other defendants named herein. KIHNEK otherwise lacks sufficient
10 information to admit or deny the remaining allegations in Paragraph 145, and therefore denies the
11 same.

12
13 **IX. PRAYER FOR RELIEF**

14 WHEREFORE, Plaintiffs request entry of judgment in their favor and against Defendants
15 and other relief as follows:

16 146. Defendants and its agents, officers, employees, representatives, successors, assigns,
17 attorneys and all other persons acting for, with, by and through, or under authority from the
18 Defendants, and each of them, be permanently enjoined from using the term "Kona" in describing,
19 labeling, or packaging Defendants' own coffee products, or advertising, promoting, marketing or
20 selling the same.

21 147. Defendants be adjudged to have violated 15 U.S.C. § 1125(a) by falsely designating
22 their coffee products as originating from Kona, when in fact such goods contain no significant
23 amount of Kona coffee beans, if any.

24 148. Pursuant to 15 U.S.C. §1117, that Defendants be held jointly and severally liable
25 for all damages suffered by Plaintiffs and the Class resulting from the acts alleged herein.

26 149. That as a result of Defendants' deliberate, willful, and intentional conduct in
27 violation of 15 U.S.C. § 1125(a), such damages be trebled.

1 150. Pursuant to 15 U.S.C. §1117, that Defendants be compelled to account for, and to
2 disgorge, any and all of the profits derived by Defendants through illegal acts complained of
3 herein.

4 151. For an award of funds sufficient to carry out a national corrective advertising
5 campaign to mitigate the reputational harm Defendants' wrongful conduct has caused, for which
6 the Defendants shall be held jointly and severally liable.

7 152. That Defendants be ordered, pursuant to 15 U.S.C. §1118, to deliver up for
8 destruction all containers, labels, signs, prints, packages, wrappers, receptacles, advertising,
9 promotional material, and products, or the like in possession, custody or under the control of
10 Defendants that are determined to violate Section 43 of the Lanham Act.

11 153. That the Court declare this to be an exceptional case and award full costs and
12 reasonable attorneys' fees pursuant to 15 U.S.C. §1117.

13 154. That the Court grant prejudgment and post-judgment interest.

14 155. That the Court grant any other remedy to which Plaintiffs and the Class may be
15 entitled as provided by law or equity.

16 156. For such other and further relief, including costs and attorneys' fees, as allowed by
17 law and as the Court deems just and equitable.

18 **ANSWER:** Paragraphs 146-156 of the Third Amended Complaint contain Plaintiffs'
19 prayer for relief to which no response is required. If a response is required, KIHNEK denies that
20 plaintiffs are entitled to any relief whatsoever in this action.

21
22 **DEMAND FOR JURY TRIAL**

23 Plaintiffs respectfully demand a trial by jury on all claims and issues so triable.

24 **ANSWER:** KIHNEK demands a jury trial as well.

AFFIRMATIVE DEFENSES

Below are KIHNE's affirmative defenses. By setting forth these affirmative defenses, KIHNE does not assume any burden of proof as to any fact issue or other element of any cause of action that properly belongs to Plaintiffs.

1. The Complaint and its purported causes of action fail to state a claim upon which relief can be granted and the complaint is uncertain.

2. Plaintiffs' causes of action are barred, in whole or in part, because Defendants acted reasonably and in good faith at all times based on all relevant facts and circumstances known by Defendants at the time that Defendants acted.

3. Plaintiffs' claims are barred by the doctrines of waiver, acquiescence, and/or estoppel and/or release of claims.

4. Plaintiffs' claims are barred, in whole or in part, by the doctrine of laches and/or any applicable statute(s) of limitations or repose and/or the doctrine of abandonment.

5. Plaintiffs' claims are barred, in whole or in part, because they lack a good faith basis to allege necessary elements of their claims.

6. Plaintiffs' claims are barred, in whole or in part, as a sanction for knowingly making false allegations in their Complaint, failing to conduct a reasonable inquiry as to the veracity of the allegations Plaintiffs represent as true in their Complaint, and/or knowingly making allegations in their Complaint that, while literally true, are intended to mislead to the Court.

7. Plaintiffs' claims are barred, in whole or in part, because they purport to rely on scientific testing that is wholly unnecessary for any Lanham Act or other claim asserted and which is included only to mislead the Court.

8. Plaintiffs' claims are barred, in whole or in part, because they are misusing the Lanham Act to try to recover attorneys' fees to circumvent class action law.

9. Plaintiff's claims are barred, in whole or in part, because they are against the work and intention of the Hawaii legislature and other governmental entities who specifically regulate

1 coffee from Hawaii and who have been working in the field of coffee and labeling regulation for
 2 many years.

3 10. Plaintiffs' claims are barred, in whole or in part, because they fail to establish any
 4 likelihood of confusion, deception, or mistake on the part of a reasonable consumer and defendant
 5 did not lie or mislead and used the truth at all relevant times.

6 11. Plaintiffs' claims are barred, in whole or in part, because all or part of the damages
 7 they allege were caused by the acts or omissions of themselves or other persons or entities for
 8 whose conduct Defendants are not legally responsible.

9 12. Plaintiffs' claims are barred, in whole or in part, because Plaintiffs have failed to
 10 prove and cannot prove any actual damages.

11 13. Plaintiffs' claims are barred, in whole or in part, because they failed to mitigate
 12 damages and to give defendants notice and an opportunity to cure any alleged violations.

13 14. Plaintiffs' claims are barred, in whole or in part, because there was no willful
 14 conduct on the part of Defendants and, therefore, Plaintiffs cannot recover Defendants' profits.

15 15. Plaintiffs' claims are barred, in whole or in part, by the doctrine of fair use.

16 16. Plaintiffs' claims are barred, in whole or in part, by the doctrine of unclean hands.

17 17. Plaintiffs' claims are barred, in whole or in part, by the fact that Defendants were
 18 not the proximate cause of their damages, if any, or there were supervening or intervening causes.

19 18. Plaintiffs' claims for equitable relief, if any, fail because Plaintiffs have an adequate
 20 remedy at law.

21 19. Plaintiffs' claims fail, in whole or in part, because Defendants complied with
 22 applicable federal and state statutes and regulations.

23 20. Plaintiffs' claims fail, in whole or in part, because Defendants relied on guidance
 24 from relevant government agencies.

25 21. Plaintiffs' claims, and those claims Plaintiffs purport to bring on behalf of members
 26 of the putative class, are barred in whole or in part because Plaintiffs and the putative class
 27

1 members lack standing to assert the alleged claims and this court lacks subject and personal matter
 2 jurisdiction over such claims and lacks venue as well.

3 22. The Court lacks personal jurisdiction over any claims on behalf of absent members
 4 of the putative class, as well as personal jurisdiction over Kevin Kihnke and L&K Coffee Co. in
 5 this matter and lacks proper venue over such claims.

6 23. Plaintiffs' claims fail, in whole or in part, because their product labels and
 7 marketing are expressive works, and thus entitled to freedom-of-speech protections under the First
 8 Amendment of the U.S. Constitution, under the Washington State Constitution, and under other
 9 applicable statutory or common law protections of speech or expressive works. Plaintiffs' claims
 10 are barred to the extent such claims infringe on Defendants' right to free speech.

11 24. The Complaint fails, in whole or in part, because it fails to set forth plausible
 12 allegations that satisfy the prerequisites for class certification, including without limitation because
 13 the claims by Plaintiffs are neither common nor typical of the claims, if any, by members of the
 14 putative class, because the named Plaintiffs are not adequate class representatives, because the
 15 putative class is not definite and ascertainable, because interests of certain members of the putative
 16 class are in conflict with the interests of other members of the putative class, because individual
 17 issues predominate, and because a class action is not the superior way to litigate Plaintiffs' and/or
 18 the putative class' claims, if any.

19 25. L&K alleges as a result of the acts, conduct, or omissions of Plaintiffs or their
 20 agents, the Complaint and each claim against KIHNE presented therein is barred by the doctrine
 21 of equitable estoppels and/or the doctrine of superior equities and/or plaintiffs' failure to do equity.

22 26. KIHNE alleges as a result of the acts, conduct, or omissions of Plaintiff or their
 23 agents, the Complaint and each claim against KIHNE presented therein is barred by the doctrine
 24 of promissory estoppel.

25 27. KIHNE alleges that Plaintiffs voluntarily assumed the risk of any and all
 26 conditions and damages alleged in the Complaint.

1 28. KIHNEK alleges that because Plaintiffs presently have not suffered any cognizable
 2 harm or presently incurred any damages, there is no current case or controversy. Plaintiffs' claims
 3 are therefore not ripe for adjudication since Plaintiffs have not suffered injury or damages
 4 cognizable under any State or Federal laws.

5 29. KIHNEK alleges that the Complaint and each claim is barred by the doctrine of
 6 unjust enrichment.

7 30. Plaintiffs have not alleged an adequate basis for the recovery of attorney's fees or
 8 costs and is neither entitled to such recovery, nor is any such recovery authorized by law. Further
 9 the costs and fees sought are both unreasonable and unnecessary in nature.

10 31. Plaintiffs cannot prove any facts showing that they relied to their detriment,
 11 reasonably or otherwise, on any matters stated in the operative Complaint or any information from
 12 KIHNEK.

13 32. KIHNEK is not liable because the damages or injuries alleged in the Complaint
 14 were caused solely by the acts or omissions of one or more third parties and KIHNEK exercised
 15 due care with respect to all matters concerned and made no contracts or representations to Plaintiff.

16 33. KIHNEK is not liable because the damages or injuries alleged in the Complaint
 17 were caused solely by the acts or omissions of one or more third parties and KIHNEK exercised
 18 due care with respect to all matters concerned and made no contracts or representations to
 19 Plaintiffs. Further, KIHNEK is not a co-conspirator, aider and abettor, or otherwise in any
 20 relationship with any co-defendants herein that would warrant vicarious or joint liability with any
 21 defendant.

22 34. The complaint is defective in that there has been a misjoinder and/or failure to join
 23 necessary parties and/or claims and/or claims have been impermissibly split or joined in this action
 24 such that a complete adjudication of this matter cannot be made and this matter must be dismissed.
 25 Further, there has been a misjoinder of defendants and/or a failure to join a party to this action
 26 under FRCP Rule 19.

1 35. This Court lacks personal or subject matter jurisdiction over the claims at issue
 2 herein and/or this is an improper venue for this proceeding.

3 36. The complaint is barred based on a Plaintiff's consent or agreement to the matters
 4 that the Plaintiff now complains of.

5 37. The Complaint and all relief sought therein is also barred by the doctrines of caveat
 6 emptor, the doctrine of the learned intermediary and/or purchaser, and by the doctrine of lack of
 7 justifiable reliance.

8 38. That the Plaintiffs themselves did not exercise ordinary care, caution or prudence
 9 to avoid the circumstances described in said Complaint and the resulting damages, if any, by them
 10 sustained; and that said circumstances and the resulting damages, if any, by them sustained were
 11 proximately caused and contributed to by the fault, carelessness and negligence of said Plaintiffs
 12 (i.e., the doctrines of comparative and contributory fault/negligence).

13 39. This answering Defendant acted in good faith and did not directly or indirectly
 14 perform any acts whatsoever which would constitute a violation of any state or federal rights
 15 possessed by the Plaintiffs. This answering Defendant acted in good faith and did not directly or
 16 indirectly perform any acts whatsoever which would constitute a breach of any duty owed to the
 17 Plaintiffs. Furthermore, defendant has acted at all relevant times in good faith in conformity with
 18 the law and the spirit of the law such that there can be no liability on the part of the Defendant.

19 40. The Complaint, and each and every cause of action alleged therein, is barred on the
 20 grounds that Plaintiffs lack standing individually to make the claims presented in their Complaint;
 21 they also lack standing to form a class of plaintiffs; or to be a representative(s) of a class for
 22 purposes of pursuing a class action. Nor do they qualify as class representatives because their
 23 claims, if any, are not typical of the class's claims as described in the Complaint. Further, the lack
 24 standing to bring the claims they bring and/or are not the real party in interest.

25 41. This answering Defendant is informed and believes, and based thereon alleges, that
 26 if any defects or inadequacies exist or existed, which this Defendant denies, Complainants failed
 27 to timely notify this answering Defendant of such conditions and failed to give this answering

1 Defendant timely opportunity to secure such conditions. This conduct by Complainants bars them
 2 from any relief from this answering Defendant herein. This answering Defendant is informed and
 3 believes and upon such information and belief alleges, that Complainant's action is barred by its
 4 failure to provide Defendant with written notice within a reasonable amount of time.

5 42. This answering Defendant is informed and believes, and on that basis alleges, that
 6 it is entitled to a setoff according to proof and/or otherwise (set-off/off-set/recoupment).

7 43. This answering Defendant is informed and believes and upon such information and
 8 belief alleges, that Complainants were reimbursed for a portion of the claimed damages and/or
 9 restitution by a third party and have subrogated to that third-party a portion of the damages and/or
 10 restitution claimed herein. Moreover, the purported claims and causes of action contained in the
 11 Complaint require for their full, final and complete resolution and adjudication the presence of
 12 additional necessary and/or indispensable parties that are not participating in this action. By virtue
 13 of the aforementioned subrogation and/or Complainant's failure to name indispensable parties,
 14 Complainant has violated the rule against splitting causes of action and/or prejudiced this
 15 answering Defendant, thus barring Complainant's recovery herein.

16 44. The Complaint and the theories presented therein are barred by the business
 17 judgment rule and/or any other similar rule and/or regime and/or doctrine.

18 45. Plaintiffs' claims are equitably barred because L&K Coffee Co. promptly stopped
 19 using the word Kona on its products in response to plaintiffs' first complaint to L&K about the use
 20 of the word Kona on its labels and packaging.

21 46. The lawsuits is bared by the doctrine of res judicata or collateral estoppel or law of
 22 the case.

23 47. The lawsuits is barred by the doctrine of competitor's privilege and the doctrine of
 24 free speech and expression.

25 48. The lawsuits is barred by the doctrine of election of remedies.

26 49. The lawsuit sets forth a moot or unripe or hypothetical or abstract question or issue
 27 and asks for an advisory opinion.

50. Plaintiffs' claims are barred, in whole or in part, to the extent that joint and several liability is an inappropriate or inapplicable remedy under the Lanham Act.

51. Defendants reserve the right to amend or supplement any affirmative defenses.

KIHNE'S PRAYER FOR RELIEF

WHEREFORE, KIHNE requests entry of judgment in his favor and against Plaintiffs' as follows:

1. Dismissing Plaintiffs' Complaint in its entirety, with prejudice and on the merits;
2. Denying Plaintiffs' requests for damages, costs, attorneys' fees, statutory penalties, equitable relief, and all other relief Plaintiffs seek;
3. Awarding Defendants their costs, expenses, disbursements, and reasonable attorneys' fees as and if permitted by law; and
4. Awarding Defendants such other further relief that the Court deems just and equitable.

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DEMAND FOR JURY TRIAL

KIHNEK respectfully demands a trial by jury on all claims and issues so triable.

DATED this 1st day of March, 2022.

HATTON, PETRIE & STACKLER APC
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d/b/a Magnum Coffee Roastery and Kevin
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By s/ MICHAEL G. ATKINS
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1 **CERTIFICATE OF SERVICE**

2 I, John A. McMahon, affirm and state that I am employed by Hatton, Petrie & Stackler
3 APC, in Orange County, in the State of California. I am over the age of 18 and not a party to the
4 within action. My business address is: 12 Journey, Ste 255, Aliso Viejo, CA 92656. On this
day, I caused the foregoing to be served on the parties by the Court's CM/ECF filing system.

5 I declare under penalty of perjury that the foregoing is true and correct, to the best of my
6 knowledge.

7 Dated this 1st day of March 2022, at Aliso Viejo, California.

8 HATTON, PETRIE & STACKLER, APC
9 By: */s/ John A. McMahon*
John A. McMahon, Attorney